

RECOMMENDATION REPORT - REVIEW OF GAS TRADING AND DISTRIBUTION LICENCES

October 2006

Economic Regulation Authority



WESTERN AUSTRALIA

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1 Executive Summary

The Economic Regulation Authority (**Authority**) is undertaking a review of gas trading and gas distribution licences, granted pursuant to the *Energy Coordination Act 1994 (Act)*. The review is being undertaken consistent with best practice design for regulation.

With the establishment of the electricity licence regime in January 2005 and the progressive grant of electricity licences from June 2005 onwards, there currently exist material differences between the terms and conditions of gas and electricity licences.

Consequently, the Authority proposes to modernise gas trading and distribution licences by making licence terms and conditions consistent, to the extent practical, with those for electricity as well as recognising energy licensing developments occurring at a national level.

As part of its review of gas trading and gas distribution licences, the Authority has proposed 85 recommendations to improve their efficiency and effectiveness. These recommendations are discussed in detail in Parts 4-7 and 9-11. In general, recommendations propose that gas trading and distribution licence terms and conditions are amended to reflect equivalent electricity licence terms and conditions. The proposed new gas licence templates are attached to this report.

The Authority has discussed the recommendations put forward in this report with members of a Gas Industry Reference Group (Reference Group) which included representatives of existing gas licensees, the Office of Energy, *EnergySafety* and the Western Australian Council of Social Services (WACOSS). The Reference Group has generally supported the recommendations.

Consistent with the Authority's Public Consultation Guidelines for Electricity, Gas and Water Licences, the public is provided with 20 business days to comment and unless otherwise requested in the public submissions received, all public submissions will be posted on the Authority's website at <http://www.era.wa.gov.au>.

Once the closing date for public comment has elapsed (16 November 2006), the Authority will consider the comments and prepare and publish the final licence templates. Depending on the outcome of the public consultation process, the Reference Group may be reconvened to consider issues raised and the Authority's proposed response.

2 Review Scope, Objectives & Process

2.1 Scope

The scope of the gas licence review is to examine:

- terms and conditions contained within a gas trading licence (Part 5);
- terms and conditions contained within a gas distribution licence (Part 6);
- mandatory licence conditions contained within the Act (Part 7);
- the applicability of constituted Supply Areas (Part 8);
- the need for licence exemptions (Part 9);
- applicable licence fees (Part 10); and
- key differences between gas and electricity licensing (legislative) frameworks (Part 11).

The review does not involve consideration of:

- *Energy Coordination (Gas Tariffs) Regulations 2000*; and
- Western Australian Gas Retail Market Rules,

as these matters operate outside of the gas licence framework.

2.2 Objectives

Since the first gas trading and distribution licences were issued in 2000 at the time the Government-owned Gas Corporation was privatised, there has been no comprehensive review of the terms and conditions contained within gas trading and distribution licences nor the licensing framework.

The Authority's review objectives are to:

- reflect the current regulatory environment and promote consistent licence regulation across the energy sector;
- enhance consumer protection, including providing scope for improved compliance;
- reduce the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence provisions and thereby reducing compliance costs; and
- utilise best practice principles of utility licensing.

2.2.1 Reflecting current regulatory environment and promoting consistent licence regulation across the energy sector

In July 2003, the Government commenced a comprehensive reform of the State's electricity market, including establishing a regulatory framework applicable to the supply of electricity.

A new electricity licence regime was established, under the *Electricity Industry Act 2004 (EIA 2004)*, in January 2005 with the first licence issued in June 2005. As at 1 July 2006, 39 electricity licences have been granted providing for the generation, transmission, distribution and retail of electricity.

Presently, all existing gas licensees, their parent companies or associated subsidiaries, hold electricity licences. However, there exist material differences in the form, content and structure of energy licences.

The electricity licence framework was and is being developed by the Authority involving extensive public consultation. Effectively, this framework consists of:

- application guidelines;
- template electricity generation, transmission, distribution, generation and integrated regional licences;
- public consultation guidelines;
- customer service charter guidelines;
- licence compliance reporting guidelines;
- compliance reporting manuals;
- asset management guidelines (electricity, gas and water licences); and
- guidelines for conducting operational audits and asset management system reviews (electricity, gas and water licences).

Electricity licences, relative to gas, are minimal and far less prescriptive. In contrast to gas, the electricity model is characterised by the use of extrinsic industry codes which are imposed by Government as licence conditions.

Once imposed, the Authority monitors and enforces code compliance through the licence framework. Electricity industry codes relevant to the licence framework established to date are:

- *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*;
- *Electricity Industry Customer Transfer Code 2004*;
- *Electricity Industry Metering Code 2005*; and
- *Electricity Industry (Network Quality and Reliability of Supply Code) 2005*.

As a result of codification, the electricity licences typically deal with procedural or compliance matters such as transfer, cancellation and amendment of licence, asset management, performance audits and individual performance standards.

In contrast, current gas licences deal with a number of day to day operational matters in a prescriptive manner such as obligations to offer to supply, maintain supply, connect supply etc.

It is a key objective of the gas licence review to modernise the gas licences consistent with Western Australian electricity licences in order to reflect current regulatory practice.

2.2.2 Enhancing consumer protection, including providing scope for improved compliance

The Authority proposes to enhance consumer protection, including improving compliance through consistency of gas and electricity regulatory practice. The Authority proposes to achieve this by establishing consistent:

- energy licence application guidelines;
- public consultation processes;
- performance audit and asset management guidelines;
- arrangements relating to standard form contracts; and
- standardising terms and conditions applicable to both gas and electricity licences on such matters as performance and financial reporting.

Standardisation of licensing arrangements:

- promotes confidence in the regulatory regime by providing for consistency of application within the energy sector;
- minimises regulatory costs by avoiding duplication of compliance activities where possible;
- enables regulatory capability to be developed within industry and the Authority, which is transferable between the gas and electricity sectors; and
- provides for consistency of supply arrangements and standards applicable to energy customers such that one type of customer does not have lesser rights than the other.

A good example as to how standardisation across utilities can work in practice is the Western Australian Energy Ombudsman scheme. A Gas Industry Ombudsman scheme was created in 2004 and extended to include electricity in 2005 thereby creating an Energy Ombudsman scheme which:

- satisfies the individual statutory requirements of the Act and Energy Industry Act 2004;
- enables capital and operating costs to be spread over both sectors;

- enables the Authority to streamline the regulation of the energy sector through the administration and enforcement of a single Ombudsman scheme; and
- benefits consumers by providing for a one-stop-shop approach to resolving energy disputes.

2.2.3 Reducing the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence provisions and reducing compliance costs

The initial gas trading and distribution licences were granted in 2000 in a climate of privatisation and a progressively liberalised gas retail market. In the period 2003-04, the Act was amended and various pieces of subsidiary legislation enacted to protect customers and facilitate the introduction of full retail contestability, which occurred on 31 May 2004.

With the passage of time and the reform of the gas and electricity markets, the current gas licences contain a number of provisions which the Authority considers are either spent, redundant or inappropriate. Examples include:

- a distribution licence containing third party access provisions (clause 9) notwithstanding the enactment of the *Gas Pipelines Access (Western Australia) Act 1998*;
- a distribution licence containing provisions (clauses 17, 18, Schedules 4, 5 and 6) which are redundant following the enactment of the *Gas Standards (Gas Supply and System Safety) Regulations 2000*;
- a trading licence containing provisions (clause 7) relating to the marketing of gas notwithstanding the enactment of the *Code of Conduct for Marketing of Gas to Small Use Customers*; and
- provisions requiring the Authority and a licensee to meet to review a gas trading and distribution licence within prescribed time periods (clause 6) notwithstanding that the parties can do this at any point in time.

These matters are discussed further in Parts 5 and 6.

2.2.4 Utilise best practice principles of utility licensing

The Authority utilises best practice principles of utility licensing which are based on the Authority's experience and the views of others, such as the Organisation of Economic Cooperation and Development, Australian Competition and Consumer Commission and Taskforce on Reducing Regulatory Burdens on Business¹. The Authority has prepared a draft paper on best practice utility licensing² and subsequently is encouraging interested parties to make submissions to the Authority on the proposed characteristics of effective licensing as described in this paper. It is considered, for example, that best practice licensing principles include:

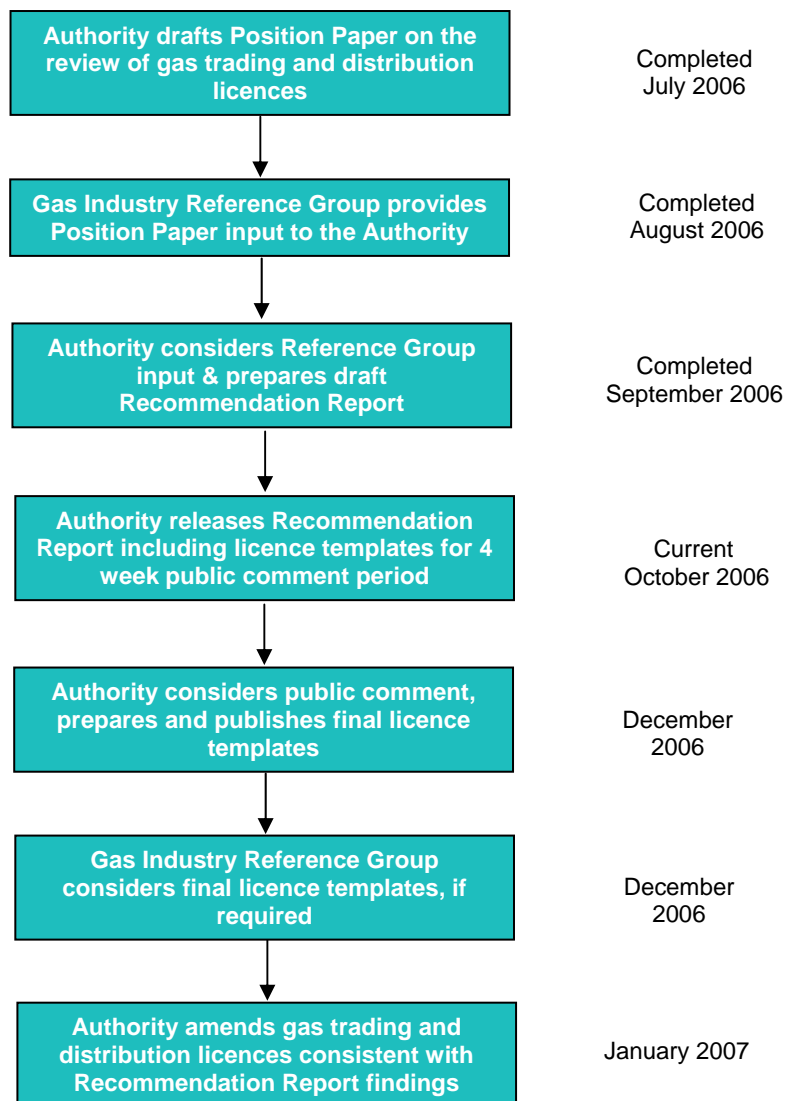
¹ Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January.

² Economic Regulation Authority, *Best practice licensing*, Economic Regulation Authority, October 2006.

- Maintaining service standards. A licensing regime should include processes that maintain the licensee's focus on service standards to customers. To maintain service standards, the Authority ensures its processes are consumer focussed, consistent across industries and based on consultation with consumer representatives. In this review, it is recommended to make gas licence service standards consistent, where possible, with electricity licence service standards.
- Minimising regulatory risks. To minimise regulatory risk, the Authority ensures its decisions are predictable, consistent, timely, transparent and based on effective consultation. In this review, it is recommended to minimise regulatory risks through standardisation of licensing provisions. The Authority is also seeking public comments on these recommendations.
- Minimising compliance costs. A licensing regime should aim to achieve its policy objectives at least cost to the licensee. To minimise compliance costs, the Authority ensures its processes incorporate simple and targeted language, are consistent with other laws and integrated across jurisdictions, are flexible and are formulated with input from interested parties. Further, licensing requirements should be proportionate to the problems that exist, not unduly prescriptive and the minimum necessary to achieve the objective. In this review, it is recommended to reduce compliance costs by deleting and or amending unnecessary licence provisions. As above, the Authority seeks input from interested parties as to the reasonableness of these recommendations.

2.3 Gas Licence Review Process

Figure 1: Process for reviewing and amending gas trading and distribution licences



The gas licence review began with the drafting of a Position Paper in July 2006. The Authority discussed the proposed recommendations put forward in the Position Paper with the Gas Industry Reference Group (**Reference Group**) in August 2006.

The Reference Group was chaired by the Secretariat of the Authority and its membership consisted of:

- existing licensees (AlintaGas, Wesfarmers Kleenheat Gas and BRW Power Generation (Esperance) Pty Ltd);
- Office of Energy;
- Western Australian Council of Social Services; and
- Energy Safety.

The Reference Group's role and function was to provide input from:

- existing and prospective gas licensees;
- Government policy makers;
- consumer representatives; and
- gas safety and technical regulators.

The Reference Group generally accepted the proposed recommendations with a few minor alterations to recommendations 22, 23, 25, 26 and 38. The Authority has subsequently revised the recommendations and produced this Recommendation Report for wider public consultation.

For the purposes of accountability and transparency, the discussion section preceding each revised recommendation includes relevant comments from the Reference Group to explain any revisions made.

In addition, the proposed gas trading and distribution licence templates following the recommendations are provided in appendices 5 and 6, respectively.

3 National Gas Licence Developments

As part of the review of gas trading and distribution licences, the Authority also met with the following regulatory bodies, in July 2006, in their respective States:

- Australian Energy Regulator (AER);
- Essential Services Commission South Australia (ESCOSA);
- Essential Services Commission Victoria (ESC);
- Queensland Government, Department of Energy; and
- Independent Pricing and Regulatory Tribunal (IPART) New South Wales.

Key outcomes of those discussions are set out below.

3.1 Why the need for gas licences

- The essential nature of a gas service, once connected, and the potential impact upon consumers in the event of market failure, requires an effective regulatory regime that is flexible and dynamic to respond to changing market circumstances.
- Licensing is seen as an efficient and minimally necessary way to monitor and enforce gas service standards and promote compliance.
- Licensing is perceived to be more responsive to changes in market circumstances relative to Acts of Parliament or regulations.

3.2 How can gas retail and distribution licence frameworks be improved?

By far the most consistent response from Eastern State regulators is the need for consistency between gas and electricity frameworks (terms and conditions, industry codes of practices, licence guidelines etc) *within* each State as well consistency *between* the States.

Regulators considered the key issues affecting their licence frameworks are:

- Regulatory duplication.
- Large amount of regulatory instruments and the need to combine/consolidate mechanisms on such matters as energy reporting manuals, industry codes of practice etc.
- Timeframes and processes to make changes to licensing frameworks, especially with respect to legislation.

Other matters raised are:

- Better definition of “entry test” (i.e. who should be licensed and who should not).

- Information reporting requirements contained within a licence being clarified and justified.
- The ability to recognise good compliance (i.e. the extent to which a licensee was required to comply with entry level licence obligations (financial and technical) over the life of the licence).
- Greater clarity of information gathering and licence revocation powers.

3.3 What aspects of licensing frameworks are operating effectively?

- Consistency of gas and electricity licence conditions.
- Guaranteed gas distribution service standards.
- “Light handedness” of licence terms and conditions combined with the use of codes of practice developed in collaboration with industry and other key stakeholders.
- Effective dispute resolution characterised by the use of Energy Ombudsman schemes.
- Streamlined reporting requirements.
- Use of regulatory forums to ensure open communication and dialogue between regulators on a regular basis.

3.4 What are the key licensing issues under consideration and what are the emergent trends?

Issues currently being addressed by Eastern State licence regulators include:

- Gas full retail competition.
- Privatisation of State owned assets.
- Transfer of regulatory functions to the AER.
- Licensing of reticulated LPG systems.
- Marketing practices of new retail market entrants.
- Third-party sub-contracting, such as on-selling, to potentially avoid licence obligations.
- Disconnection provisions and hardship arrangements as potential barriers to entry for smaller market participants.
- Consistency of customer protection arrangements across utilities (energy, telecommunications and water).

- Number and frequency of customer disconnections.
- Customer mobility (customer churn and non-churn, i.e. move-in/move-out arrangements).
- Licensing costs (i.e. system costs incurred by licensees, especially incumbents, in having to comply with new reporting and billing arrangements).

3.5 Conclusion

Based upon the Authority's review including its discussions with Eastern State Regulators, the Authority is of the view that there is a demonstrated need for gas licensing regulations, these regulations being the minimally necessary to achieve their regulatory objective. The proposed recommendations are generally consistent with Eastern State energy licensing frameworks and trends.

4 Legislative Framework

4.1 Energy Coordination Act 1994

The Act was amended in 1999 to establish a gas trading and distribution licence regime administered by the Coordinator of Energy, Office of Energy.

The licensing of gas transmission pipelines was not necessary as this had already occurred under the *Petroleum Pipelines Act 1969*.³

Upon enactment of the *Economic Regulation Authority Act 2003*, responsibility for the administration and enforcement of the gas trading and distribution licence regime was transferred from the Coordinator of Energy (Government) to the Economic Regulation Authority (independent Regulator). The effective date for this transfer was 19 March 2004.

Under the Act, a person must not in a Supply Area or part of a Supply Area:

- construct, alter or operate a distribution system; or
- transport gas through a distribution system; or
- sell to small use customers⁴ gas transported through a distribution system,

except under the authority of a distribution or trading licence⁵.

The Authority's functions under the Act⁶ are:

- to administer the licensing scheme provided for under the Act;
- to monitor and report to the Minister on the operation of that licensing scheme and on licensee compliance;
- to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence; and
- any other licensing function conferred on the Authority by the Act.

The Authority is not responsible for:

- licence cancellation;
- licence exemptions;
- creation of Supply Areas;
- regulation of gas tariffs;

³ Under the *Energy Coordination Act 1994* a gas distribution system is defined, amongst other matters, as a system of pipelines, mains, and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers

⁴ Defined under the Act as a person who consumes less than 1 terajoule of gas per annum. This generally equates to about \$11,000 worth of gas per year.

⁵ Refer section 11G of the Act.

⁶ Refer section 11AA of the Act.

- reviewing gas licence decisions; and
- creating licence conditions in the Act or regulations (although the Authority is responsible for ensuring compliance with such conditions).

A detailed schematic illustrating gas licence inter-relationships is provided in Appendix 2.

4.2 Existing licensees

Currently, six trading and six distribution licences have been granted respectively, as follows:

Table 1: Gas Trading and Distribution Licensees

	Licensee	Supply Area	Licence Number	Date of Grant
Distribution				
1.	AlintaGas Networks	Goldfields - Esperance	GDL1	01-Jul-00
2.	AlintaGas Networks	Coastal	GDL2	01-Jul-00
3.	AlintaGas Networks	Great Southern	GDL3	01-Jul-00
4.	Wesfarmers Kleenheat	Goldfields - Esperance	GDL4	31-Aug-00
5.	Wesfarmers Kleenheat	Coastal	GDL5	31-Aug-00
6.	Esperance Power Station	Goldfields - Esperance	GDL6	14-Oct-05
Trading				
7.	AlintaGas Sales	Goldfields - Esperance	GTL1	01-Jul-00
8.	AlintaGas Sales	Coastal	GTL2	01-Jul-00
9.	AlintaGas Sales	Great Southern	GTL3	01-Jul-00
10.	Wesfarmers Kleenheat	Goldfields - Esperance	GTL4	31-Aug-00
11.	Wesfarmers Kleenheat	Coastal	GTL5	31-Aug-00
12.	BRW Power Generation Esperance	Goldfields - Esperance	GTL6	14-Oct-05

5 Review of Gas Trading Licence Terms and Conditions

5.1 Interpretation (Clause 1)

Summary

Clause 1 defines the terms used throughout the trading licence.

Discussion

Clause 1 will require consequential amendment to reflect amendments to licence terms and conditions.

Recommendation 1

Amend as required.

5.2 Licence area (Clause 2)

Summary

Clause 2 specifies the geographic area to which the licence applies.

Discussion

No material differences exist between gas and electricity licences on this matter.

Recommendation 2

Transfer licence area details to a Schedule, consistent with the electricity retail licence template.

5.3 Term (Clause 3)

Summary

Clause 3 specifies the term of licence.

Discussion

Different licence terms exist between gas trading (10 years) and electricity retail licences (15 years). However, as the Act and EIA 2004 prescribe the respective licence terms, consistency cannot be achieved through licence amendment. However, this is a matter for Government to consider in the future.

Recommendation 3

- Transfer licence term details to a Schedule, consistent with the electricity retail licence template.
- Government to consider creating consistent terms for the duration of gas trading and electricity retail licences.

5.4 Licence fees (Clause 4)

Summary

Clause 4 states that licence fees are to be determined under section 11Q of the Act.

Discussion

The fee provision (clause 4) in the electricity retail licence template states that the licensee must pay applicable fees in accordance with the *Electricity Industry (Licensing Fees) Regulations 2005*. The comparable gas licence fee regulations are the *Energy Coordination (Licensing Fees) Regulations 1999*.

Recommendation 4

Amend consistent with clause 4 of the electricity retail licence template.

5.5 Notices (Clause 5)

Summary

Clause 5 specifies the notice provisions applicable to a trading licence.

Discussion

The matter is addressed in the electricity retail licence template by way of a definition of the term “notice”.

Recommendation 5

Amend consistent with the definition of “notice” within the electricity retail licence template.

5.6 Licence review (Clause 6)

Summary

Clause 6 requires the Authority and the licensee to meet at prescribed intervals to review and discuss matters relevant to the licence.

Discussion

As there are no impediments to the Authority and a trader meeting to discuss licence matters at any point in time, the provision is considered redundant.

Recommendation 6

Delete.

5.7 Obligation to market gas (Clause 7)

Summary

Clause 7 requires a trader, to the extent commercially viable, to make reasonable endeavours to promote the sale of gas to small use customers.

Discussion

The Authority understands that the original intent of clause 7 was to avoid a potential practice by traders to selectively market to specific small use customers within a licence area. This was especially relevant to the grant of a gas trading licence for the Kalgoorlie-Boulder area, which was intended to be exclusive.

It is the view of the Authority that the provision should be deleted on the basis that:

- all trading licences are now non-exclusive;
- no comparable provision exists within the electricity retail licence template;
- there is an economic incentive for traders to market gas; and
- a dedicated framework exists to deal with marketing matters under Part 2C of the Act, specifically the creation of the *Gas Marketing Code of Conduct 2004.*, This is currently the subject of a review pursuant to the Act. The Code does not contain a provision consistent with clause 7. However, if it is appropriate that traders are subject to such a provision, then the Code is the most appropriate place for such an obligation.

Recommendation 7

Delete.

5.8 Coordinator may direct licensee to commence supply (Clause 8)

Summary

Clause 8 provides the ability for the Authority to direct a trader to offer to supply a small use customer under an approved standard customer contract in prescribed circumstances.

Discussion

The Authority notes that an equivalent, albeit less prescriptive, licence obligation exists for Government owned electricity retail Corporations with respect to small use customer supply (i.e. < 160 MWh).

This obligation is contained within regulation 40 of the *Electricity Industry (Customer Contracts) Regulations 2005* and has its origins in the recommendations of the Electricity Reform Task Force endorsed by Government in November 2002.

Regulation 40 is detailed below:

40. Requirement to offer to supply electricity under standard form contract

- (1) A relevant corporation is required to offer to supply electricity under a standard form contract to a customer who requests supply on or after the day on which these regulations come into operation.
- (2) The obligation in subregulation (1) does not arise if —
 - (a) the premises of the customer requesting supply are not connected to a distribution system; and
 - (b) there is no obligation under the *Electricity Industry (Obligation to Connect) Regulations 2005* regulation for a distributor to attach or connect those premises to a distribution system.
- (3) The obligation in subregulation (1) does not arise if the customer requesting supply —
 - (a) owes an amount of money to the relevant corporation; and
 - (b) has not —
 - (i) entered into an arrangement with the relevant corporation for payment of the amount owed; or
 - (ii) complied with the terms of any such arrangement.
- (4) It is a condition of every retail licence and integrated regional licence held by a relevant corporation that it must comply with the obligation in subregulation (1).

The Authority considers the power of direction currently afforded to the Authority to be overly prescriptive and inappropriate given the comparable electricity obligation imposed by Government on, and from, 1 January 2006.

The Authority therefore proposes that clause 8 be amended consistent with the electricity licence obligation. However, in doing so, this raises the following policy matters:

- who should impose the obligation?
- who should it apply to?
- how should it be imposed?

It is also noted that the gas industry is different to the electricity industry in that gas supply is not considered to be an essential service and therefore, the question of whether a licence obligation or regulation to supply gas is required. Hence, it is recommended that Government conduct a cost benefit analysis for continuing this obligation.

In view of the recent enactment of the *Electricity Industry (Customer Contracts) Regulations 2005*, the Authority is of the view that a gas trading obligation to offer to supply should be imposed by Government by amendment to the *Energy Coordination (Customer Contracts) Regulations 2004* as this will provide for a consistent application of the obligation by Government.

Recommendation 8

- Government to review whether an obligation on the holder of a gas trading licence to supply gas is required.
- If required, the *Energy Coordination (Customer Contracts) Regulations 2004* be amended to impose an obligation on the holder of a gas trading licence to offer to supply gas generally consistent with regulation 40 of the of the *Industry (Customer Contracts) Regulations 2005*.
- Upon amendment of the *Energy Coordination (Customer Contracts) Regulations 2004*, clause 8 of the gas trading licence be amended or deleted as required.

5.9 Obligation to maintain supply (Clause 9)

Summary

Clause 9 requires that once a customer has been supplied with gas, a trader must maintain that supply subject to various prescribed requirements.

Discussion

The Authority notes that this provision pre-dates the establishment of a statutory contract regime applicable to small use customers, contained within Part 2A Division 4A of the Act.

Under that regime:

- regulations may be made, amongst other matters, in relation to terms, conditions and provisions applicable to a standard form contract or non-standard form contract;
- a trading licence is not to be granted unless the Authority has approved a trader's standard form contract;
- a standard form contract is not to be amended or replaced without the Authority's consent; and
- the Authority may direct that a contract be amended in prescribed circumstances.

The Authority notes that as the obligation to maintain supply is presently dealt with as a specific licence condition (clause 9) and also contractually, that this is potentially a duplication of regulation. However, there is a reason for retaining this duplication as discussed below.

The Authority is of the view that the retention of clause 9 is necessary to support the Supplier of Last Resort scheme, which is provided for under Part 2A, Division 6A of the

Act. A breach of clause 9, which may lead to licence cancellation, would then trigger the commencement of the Supplier of Last Resort scheme as provided for under the Act. Consequently, the Authority recommends the retention of clause 9.

Recommendation 9

Retain.

5.10 Service standards and information provision (Clause 10)

Summary

Clause 10, amongst other matters, requires a trader to:

- use best endeavours to maintain a level of customer service at least consistent with the *Australian Gas Association's Natural Gas Customer Service Code AG 755-1998 (AGA Code)*, except where the Authority permits otherwise;
- provide the Chairman with a copy of the trader's customer service charter and include within that charter a statement of the general principles under which the trader will provide services to the customer; and
- provide prescribed information to the customer in relation to contracts, relevant customer service code provisions, emergency procedures, complaint handling etc.

Discussion

The Authority notes that the AGA Code was established in 1998 and has become redundant over time. The Authority further notes that jurisdictions in other States have not called upon the AGA Code for a number of years but have sought to establish and regulate service standards through a variety of individual marketing, retail and distribution codes.

In Western Australia, the Authority is responsible for the administration and enforcement of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*⁷ which was developed by Government in collaboration with the Electricity Reform Consumer Forum which consisted of Government, industry and consumer representatives.

The Code, which took effect on 31 December 2004, deals with:

- marketing;
- connection;
- billing;
- payment;
- payment difficulties and financial hardship;

⁷ The *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* is currently under review in accordance with section 88 of the *Electricity Industry Act 2004*

- disconnection;
- pre-payment meters;
- information and communication;
- customer service charter;
- record keeping; and
- customer service standard payments.

The Code is presently the subject of a statutory review which is expected to be completed by June 2007.

The Authority is of the view that the AGA Code does not safeguard the interests of gas small use customers to the same extent as electricity customers are protected by the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* and therefore for consistency should have no further application to Western Australian gas small use customers.

In its place, the Authority recommends that the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* be extended to include the supply of gas by creating an Energy Code of Conduct, similar to the arrangements established by Government to extend the Gas Industry Ombudsman Scheme to create an Energy Ombudsman Scheme.

In creating an Energy Code of Conduct, the Authority recommends that relevant matters of the type dealt with under the *Gas Marketing Code of Conduct 2004*⁸, or any successor instrument, also be incorporated within the Energy Code of Conduct to reduce the number of compliance instruments applicable to a gas trading licence.

The Authority notes that this proposal would reduce the number of customer service codes applicable to energy licensees from three to one, while providing for consistency in the application, compliance, regulation and adjudication of service standards applicable to customers by the Authority, energy licensees and the Energy Ombudsman.

Clause 10 does not contain provisions relating to the amendment of a trader's customer service charter, whereas the electricity retail licence template (clause 16) does. For consistency, the Authority recommends that a gas trading licence contains customer service charter amendment provisions.

Recommendation 10

- The *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* be amended to create an Energy Code of Conduct.
- That at the time that the Energy Code of Conduct is created, all trading licence provisions which refer to the AGA Code be repealed and replaced with a single licence provision which requires a trader to comply with the Energy Code of Conduct.

⁸ The *Gas Marketing Code of Conduct 2004* is currently under review in accordance with the 11ZPV of the *Energy Coordination Act 1994*

- Consideration is given to including relevant matters of the type dealt with under the *Gas Marketing Code of Conduct 2004*, or any successor instrument, within the Energy Code of Conduct.
- Clause 10 be amended to insert provisions relating to a customer service charter consistent with clauses 15 and 16 of the electricity retail template.

5.11 Complaints handling process (Clause 11)

Summary

Clause 11 requires a trader to establish a internal complaints handling process applicable to small use customers.

Discussion

The Authority notes that clause 11 was established prior to the creation of the statutory Gas Industry Ombudsman Scheme⁹ and the subsequent extension of that scheme to include electricity.

The Authority also notes that this matter is addressed with respect to electricity within the *Code of Conduct for the Supply of Electricity for Small Use Customers 2004*. Consistent with recommendation 10, the Authority considers that internal complaints handling procedures and requirements are more appropriately addressed within an Energy Code of Conduct.

Recommendation 11

Delete and replace with a single licence provision which requires a trader to comply with an Energy Code of Conduct. The amendment should take effect upon the commencement of an Energy Code of Conduct.

5.12 Standard Customer Contracts (Clause 12)

Summary

Clause 12 refers to the inclusion of a trader's standard form contract within the licence in the form of Schedule 3.

Discussion

The Authority notes that clause 12 was established prior to the creation of a statutory framework applicable to standard form contracts¹⁰.

Given the existence of this framework, the Authority considers the insertion of the standard form contract within a trading licence to be regulatory duplication. This is especially so given section 11WG of the Act, which requires a trader to comply with a

⁹ Refer Part 2D and Schedule 2B of the Act.

¹⁰ Refer Part 2A - Division 4A of the Act.

standard form contract approved by the Authority or a non-standard contract that complies with the Act, as a mandatory trading licence condition.

The Authority notes, however, that the electricity retail licence template, whilst not including a standard form contract as part of the licence, contains provisions relating to standard form contracts. These principally relate to directions and contract amendments. For consistency of licensing regulation, the Authority proposes that clause 12 be deleted and replaced with relevant customer contract provisions consistent with the electricity licence template.

Recommendation 12

Delete and replace with clauses 13 and 14 of the electricity retail licence template.

5.13 Contestability (Clause 13)

Summary

Clause 13 requires a trader to provide written notice to each small use customer, acceptable to the Authority's Chairman, which advises a small use customer of their right to choose a gas provider of their choice.

Discussion

The Authority notes that full retail contestability was implemented in Western Australia on 31 May 2004. Accordingly, the Authority considers the provision is spent.

Recommendation 13

Delete.

5.14 Customer Safety Awareness Program (Clause 14)

Summary

Clause 14 requires a trader to prepare and lodge a customer safety awareness program with the Authority, which addresses prescribed matters.

Discussion

The Authority notes that this matter is addressed with respect to electricity within the *Code of Conduct for the Supply of Electricity for Small Use Customers 2004*. Consistent with recommendation 10, the Authority considers that customer safety matters are more appropriately addressed within an Energy Code of Conduct.

Recommendation 14

Delete and replace with a single licence provision, which requires a trader to comply with an Energy Code of Conduct. The amendment should take effect upon the commencement of an Energy Code of Conduct.

5.15 Annual information returns (Clause 15)

Summary

Clause 15 requires a trader to provide information in Schedule 4 for each financial year by no later than 31 August.

Schedule 4 contains specific information to be provided by a licensee on an annual basis.

Discussion

The Authority notes that the National Utility Regulator's Forum is currently undertaking a review of gas and electricity licence information reporting.

It is a key objective of the Authority, in reviewing Western Australian gas trading and distribution licences, to seek national consistency of information returns wherever possible and practical.

Consequently, the Authority proposes to retain clause 15 and Schedule 4 in its present form until the outcome the Utility Regulator's Forum is known. The Utility Regulator's Forum is expected to submit the outcome of its deliberations to the AER by late 2006.

It is also proposed to add a general provision of information clause consistent with the electricity retail licence clause 24 which requires the licensee to provide the Authority with any information that the Authority may require in connection with its functions under the Act in the time, manner and form specified by the Authority.

The electricity retail licence clause corresponds to a draft electricity compliance reporting manual which is available on the Authority's website.

Once the Utility Regulator's Forum response is known, the Authority will seek public comment on a further licence amendment to delete clause 15 and Schedule 4 and develop a gas compliance reporting manual similar to that of the draft electricity compliance reporting manual which would align with the proposed general licence clause for the provision of information.

Recommendation 15

- Retain pending completion of the Utility Regulators Forum review of information reporting.
- Add a general provision of information clause consistent with clause 24 of the electricity retail licence template and seek public comment on the development of a gas compliance reporting manual.

5.16 Financial and technical resources (Clause 16)

Summary

Clause 16 requires that a trader:

- (1) must have and continue to have the financial and technical resources to meet current and foreseeable obligations;
- (2) must ensure that its employees, agents and subcontractors are competent persons;
- (3)(a) provide written evidence to show the trader maintains financial and technical resources within 2 weeks of the request by the Authority; and
- (3)(b) notify the Authority immediately of a significant reduction in the financial or technical resources impacting on the trader's obligations.

Discussion

Section 11S of the Act states that the Authority must not grant a licence unless an applicant has, and is likely to retain, the financial and technical resources to undertake the activities authorised by the licence.

Clause 16(1) of a trading licence imposes an obligation upon a trader to ensure that they possess financial and technical capability on an ongoing basis.

The Authority notes that no comparable provision to clauses 16(1), (2) and (3)(a) exists within the electricity retail licence template.

Industry has argued that clauses 16(1), (2) and (3) should be deleted on the basis that it is unclear what measures and standards are to be used to determine compliance with these provisions and, importantly, who will determine compliance or otherwise. Industry considers that the matter is already dealt with under the *Corporations Act 2001* which imposes relevant obligations on directors and officers of a corporation. The Authority considers the concerns expressed by industry to be generally valid.

In terms of clause 16(3)(a) and (b) the Authority notes that clause 23 of the electricity retail licence template requires that a licensee must report to the Authority as soon as the licensee:

- is under external administration within 2 business days; and
- experiences a change in corporate, financial or technical circumstances within 10 business days.

To provide for greater consistency between gas and electricity licences, the Authority recommends that clause 16(3) be amended.

Recommendation 16

- Delete clauses 16(1) and (2).
- Amend clause 16(3)(b) consistent with clause 23 of the electricity retail licence template.

5.17 Back-up trader arrangements (Clause 17)

Summary

Clause 17 provides the ability for the Authority to direct one or more traders to become the “back-up trader” in the event that an existing trader can no longer supply gas to its small use customers.

Discussion

The Authority notes that clause 17 pre-dates the establishment of the Supplier of Last Resort scheme provided for under Part 2A, Division 6A of the Act. More specifically, the Authority notes that section 11ZAJ provides that it is a condition of every trading licence that in the event that a trader is designated as a Supplier of Last Resort within a particular area, then they are obliged to perform those functions.

In recognition of the Supplier of Last Resort statutory framework, the Authority considers that retention of clause 17, in its present form, would result in regulatory duplication and therefore recommends its deletion.

The Authority notes that clause 17 of the electricity retail template requires that if the licensee is a designated supplier of last resort, then the licensee must perform the functions of the Supplier of Last Resort as defined in Part 5 of the EIA 2004.

For consistency of energy licensing, the Authority proposes that clause 17 of the trading licence be amended.

Recommendation 17

Amend consistent with clause 17 of the electricity retail licence template.

5.18 Performance bond (Clause 18)

Summary

Clause 18 states that a performance bond may be required from a trader at an amount specified within Schedule 5 of the trading licence.

Discussion

The purpose of the performance bond as specified within clause 18 is to:

- (a) obtain the trader’s performance of secured obligations; and
- (b) provide for the continuation of gas supply to the trader’s small use customers.

The Authority notes that:

- the performance bond obligations have existed in all gas trading licences granted since 2000, but all bonds have been set at nil and no obligations secured;

- section 11S of the Act states that the Authority must not grant a licence unless the licensee has, and is likely to retain, the financial and technical resources to undertake the activities authorised by the licence;
- a statutory Supplier of Last Resort scheme was established in 2003 when the Act was amended and regulations¹¹ were enacted in 2005 to support the scheme;
- the electricity retail licence template contains no similar performance bond provisions.

In view of the above, specifically the customer protection afforded by the Supplier of Last Resort scheme, the Authority recommends that clause 18 be deleted.

Recommendation 18

Delete.

5.19 Insurance (Clause 19)

Summary

Clause 19 requires that a trader possesses adequate property and liability insurance and to provide such details to the Authority upon request.

Discussion

Industry has argued to the Authority that the requirement for a trader to possess sufficient insurance coverage, by way of a licence obligation, is excessive and inappropriate. Industry considers that the insurance provisions contained within a gas trading licence should be deleted and left to the requirements under the *Corporations Act 2001* including the general duties of Directors to properly manage the affairs of their Companies.

The Authority notes that no insurance provision is contained within the electricity retail licence template and considers the points made by industry to be valid.

Recommendation 19

Delete.

5.20 Accounting (Clause 20)

Summary

Clause 20 requires a trader to:

- determine all income, expenses, assets and liabilities relating to the activities of the licence;

¹¹ Refer *Energy Coordination (Last Resort Supply) Regulations 2005*.

- segregate income, expenses, assets and liabilities relating to the licence as distinct from the trader's other business activities;
- prepare annual financial statements consistent with AASB 1034 and AASB 1035;
- obtain a report from an auditor approved by the Authority to provide an opinion on the compliance with the accounting standards and licence and that transfer payments between business units of the licensee are true and accurate; and
- provide a copy of the auditor's report by no later than 31 October each year or other date as approved by the Authority.

Discussion

The Authority understands that the detailed accounting provisions were included to enable the Government to form a view, annually, as to the financial status of the trader for each respective licence held.

However, the accounting requirements in clause 20 impose extensive and prescriptive reporting obligations upon a trader. In contrast, the electricity retail licence template requires a licensee to maintain accounting records that comply with Australian Accounting Board Standards or equivalent International Accounting Standards.

The Authority is of the view that the current licence requirement to report on a licence by licence basis imposes compliance costs that outweigh the benefits of receiving such information.

The Authority considers that a more appropriate form of accounting is to adopt the accounting provisions contained within the electricity retail licence template.

Recommendation 20

Amend as per clause 20 of the electricity retail licence template.

5.21 Performance criteria (Clause 21)

Summary

Clause 21 specifies the performance criteria that are to be subject of a periodic performance audit mandated by section 11ZA of the Act.

Discussion

Under the electricity retail licence template (clause 22), the criteria to be subject of a mandatory performance audit are those specified within applicable legislation. In addition, the Authority may prescribe individual performance standards in relation to the licensee's obligations under a retail licence (clause 21).

The Authority considers the current gas and electricity licence provisions relating to performance criteria to be of comparable nature. For consistency, the Authority proposes that the electricity retail licence template provision be adopted.

Recommendation 21

Amend as per clause 21 and 22 of the electricity retail licence template.

5.22 Amendment of licence (Clause 22)

Summary

Clause 22 provides for licence amendment or substitution by the Authority and specifies the procedure for doing so.

Discussion

The Authority notes that the process for amending a gas and electricity licence are generally similar in terms of:

- both sector licences require the Authority to provide written notice with the trading licence requiring more specific details; and
- both sector licences require the Authority to provide the licensee with a minimum period to comment on a licence amendment proposed by the Authority.

To provide for consistency between gas trading and electricity retail licences, the Authority proposes that gas trading licences be amended consistent with clause 11 and 12 of the electricity retail licence template.

Before seeking comments from the Reference Group, recommendation 22 stated:

“Amend consistent with clauses 11 and 12 of the electricity retail licence template.”

The Reference Group has recommended that the Authority should allow 20 business days for comment on proposed licence amendments instead of the 15 business days as currently described in section 12.2 (b) of the electricity licence.

Recommendation 22

Amend consistent with clauses 11 and 12 of the electricity retail licence template and provide 20 business days, or such additional period the Authority may consider as being reasonable, for licensees to make submissions on the proposed licence amendment.

5.23 Exchange of information between the licensee and the holder of a distribution licence (Clause 23)

Summary

Clause 23 requires that a trader must provide information (other than commercially sensitive information) relating to its licensing activities as requested by the holder of a distribution licence to enable the distributor to provide for the safe and efficient operation of its gas distribution system.

Discussion

The Authority understands that the intent of clause 23 was to enable a distributor to have access to information by a trader to enable it to plan for the expansion and development of its gas distribution system over time.

The Authority notes that clause 14 of a distribution licence imposes an obligation upon a distributor to seek opportunities to expand the coverage of the distribution system within a licence area. In doing so, the distributor must comply with the Office of Energy's *Guidelines for the Design and Planning of Interconnected Gas Distribution Networks dated February 2000* and that clause 23 of a trading licence is necessary to support the operation of the guidelines.

At this stage, the Authority does not have a view on the continued application of the guidelines and seeks stakeholder input to assist its deliberations. The outcome of public consultation on the matter will be an important determinant as to the Authority's position on clause 23 of the trading licence.

Before seeking comments from the Reference Group, recommendation 23 stated:

“The Authority seeks public comment on the need for clause 23.”

The Reference Group recommended that this licence condition should be retained in a modified form to allow information critical to the safe and reliable operation of the distribution system to be provided by the retailer.

The Authority has therefore recommended retaining this clause until a suitable clause in an Energy Code of Conduct is developed.

Recommendation 23

Retain pending the development of an Energy Code of Conduct.

5.24 Indemnity (Clause 24)

Summary

Clause 24 requires a trader to indemnify the State of Western Australia, the Minister for Energy, the Authority's Chairman, the Authority and its agents and contractors against liability resulting from the licensee's activities under the licence.

Discussion

The Authority considers the indemnity provision contained within a trading licence to be no longer appropriate given:

- liability in relation to the Authority's Chairman, members of the Authority and its staff members and its contractors is addressed under section 56 of the *Economic Regulation Authority Act 2003*;
- liability in relation to public servants is addressed under section 106 of the *Public Sector Management Act 1994*; and

- the electricity retail licence template contains no indemnity provisions.

The Reference Group sought clarification that the indemnity provided by this clause was the same as the indemnity clauses as listed in the *Economic Regulation Authority Act 2003* and the *Public Sector Management Act 1994*. The relevant provisions in the *Economic Regulation Authority Act 2003* and the *Public Sector Management Act 1994* would protect the Authority, its staff and public servants from liability in relation to the performance of their duties. This is narrower than the indemnity contained in clause 24 of the licence. However, the Authority cannot see a justification for such a broad indemnity as is currently in clause 24 of the licence.

In view of the above, the Authority proposes that clause 24 be deleted.

Recommendation 24

Delete.

5.25 Surrender of licence (Clause 25)

Summary

Clause 25, amongst other matters, specifies that a trader may:

- at any time surrender its licence in whole or in part; and
- upon the surrender of its licence, be required to comply with one or more of the following:
 - pay all amounts due under the Act.
 - comply with terms and conditions of the licence, Act and regulations.

Furthermore, the clause enables the Authority to direct a trader to publish a notice in a newspaper regarding the licence surrender and allow at least one month for any interested person to comment.

Discussion

Both gas trading and electricity retail licences deal with the surrender of a licence, although the gas trading provisions are more prescriptive. Clause 9 of the electricity retail licence template provides for surrender of licence in the following manner:

- by a retailer following written notice to the Authority; and
- to take effect on the day that the Authority publishes a notice of surrender in the Gazette.

Given that details of all electricity licence applications (grant, amendment, surrender and transfer) are required to be published on the Authority's website for public comment, as per the Authority's public consultation guidelines, the Authority considers it appropriate to amend clause 25 consistent with clause 9 of the electricity retail licence template.

Recommendation 25

Amend as per clause 9 of the electricity retail licence template.

5.26 Fees and charges (Clause 26)

Summary

Clause 26 requires a trader to inform the Authority within one month of changes to gas prices, price structures, fees and interest rates applicable under a standard customer contract.

Discussion

The Authority notes that:

- Gas tariffs are prescribed and regulated by Government in specific circumstances by the *Energy Coordination (Gas Tariffs) Regulations 2000* and under those Regulations the Authority has no prescribed role.
- Clause 26 is a notification provision and the Authority has no role in the determination or approval of a trader's fees and charges.
- No comparable obligation exists under the electricity retail licence template.
- A trader is obliged to notify its customers of any proposed price increases as a requirement under its approved standard form contract.

Before seeking comments from the Reference Group, the Authority had recommended the deletion of clause 26.

The Reference Group recommended that this licence condition should be retained in a modified form to allow price information to be provided to Government.

The Authority has therefore recommended modifying this clause so that the licensee must directly report to Government. However, it is also recommended that Government conduct a cost benefit analysis to determine whether this licence clause is required.

Recommendation 26

- Clause 26 be amended so that a trader informs the Minister within one month of changes to gas prices, price structures, fees and interest rates applicable under a standard customer contract.
- Government to consider whether this licence clause should be deleted.

5.27 Statutory services plan (Schedule 2)

Summary

Schedule 2 contains licence area details.

Discussion

No material inconsistency exists between a gas trading licence and an electricity retail licence on this matter.

Recommendation 27

Standardise licence area map numbering system between gas and electricity licences.

5.28 Standard customer contract (Schedule 3)

Summary

Schedule 3 contains a trader's approved standard form contract.

Discussion

Refer section 5.12.

Recommendation 28

Delete.

5.29 Information to be contained within annual information returns (Schedule 4)

Summary

Schedule 4 specifies the annual information returns that a trader must comply with.

Discussion

Refer section 5.15.

Recommendation 29

- Retain pending completion of the Utility Regulators Forum review of information reporting.
- Add a general provision of information clause consistent with clause 24 of the electricity retail licence template and seek public comment on the development of a gas compliance reporting manual.

5.30 Performance bond (Schedule 5)

Summary

Schedule 5 specifies the amount of a trader's performance bond and the obligation it is to be secured against.

Discussion

Refer section 5.18.

Recommendation 30

Delete.

5.31 Summary of key statutory provisions (Schedule 6)

Summary

Schedule 6 provides a summary of key statutory provisions that effect a gas trading licence.

Discussion

Schedule 6 has no legal effect and in view of the amendments to the Act in 2003 and subsequent enactment of subsidiary legislation on such matters as standard form contracts, Gas Industry Ombudsman, Supplier of Last Resort scheme, *Gas Marketing Code of Conduct 2004* etc, is now out of date.

The Authority is of the view that a trading licence is a legal instrument and should not serve as an explanatory memorandum. This matter is more appropriately addressed within licence application guidelines.

Recommendation 31

Delete.

ELECTRICITY RETAIL LICENCE PROVISIONS THAT HAVE NO GAS TRADING LICENCE EQUIVALENT

5.32 Compliance (Clause 5 of the electricity retail licence template)

Summary

Clause 5 of the electricity retail licence states that a licensee must comply with applicable legislation.

While this is a potential duplication of regulation, the advantage of such a provision is that, if a licensee does not comply with applicable legislation, the Authority has the power to direct a licensee in writing to correct any breach or prevent a further breach within a specified timeframe.

Discussion

No comparable provision exists under a gas trading licence. However, for consistency between gas and electricity, it is proposed to include a similar provision within a gas trading licence.

Recommendation 32

Insert.

5.33 Transfer of licence (Clause 7 of the electricity retail licence template)

Summary

Clause 7 of the electricity retail licence template specifies that a licence may only be transferred in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a trading licence for completeness.

Recommendation 33

Insert.

5.34 Cancellation of licence (Clause 8 of the electricity retail licence template)

Summary

Clause 8 of the electricity retail licence template specifies that a licence may only be cancelled in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a trading licence for completeness.

Recommendation 34

Insert.

5.35 Renewal of Licence (Clause 10 of the electricity retail licence template)

Summary

Clause 10 of the electricity retail licence template specifies that a licence may only be renewed in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a trading licence for completeness.

Recommendation 35

Insert.

5.36 Approved scheme (Clause 19 of the electricity retail licence template)

Summary

Clause 19 specifies that a retailer must not supply electricity to a small use customer unless the retailer is:

- a member of an approved electricity Ombudsman scheme; and
- bound by, and compliant with, any decision or direction of the electricity Ombudsman under the approved scheme.

Discussion

No comparable provision exists under a gas trading licence. However, for consistency between gas and electricity, it is proposed to include a similar provision within a gas trading licence.

Recommendation 36

Insert.

5.37 Directions by the Authority (Clause 18 of the electricity retail licence template)

Summary

Clause 18 of the electricity retail licence template requires a licensee to comply with directions made under section 53 of EIA 2004. (Section 53 provides that the Authority may direct an amendment to an approved standard form contract.)

Discussion

No comparable provision exists under a gas trading licence. However, for consistency between gas and electricity, it is proposed to include a similar provision within a gas trading licence.

Recommendation 37

Insert.

5.38 Publishing information (Clause 25 of the electricity retail licence template)

Summary

Clause 25 of the electricity retail licence template provides that the Authority may direct a licensee to publish any information, within a specified timeframe it considers relevant, in connection with the licensee or performance by the licensee of its obligations under the licence. In the event that a licensee considers information to be confidential, the licensee must notify the Authority or seek a review of the Authority's decision.

Discussion

The Authority considers the publication of information to be fundamental to the operation of the gas trading market by promoting full disclosure of relevant information by licensees. This clause provides for the Authority to direct a licensee to publish information that informs customers, licensees and other interested stakeholders about the activities of the licensee in the market in a transparent manner.

Section 5.15 of this Recommendation Report introduces the development of a compliance reporting manual for the gas industry which would follow the draft electricity compliance reporting manual. It is proposed to develop a draft gas compliance reporting manual and subject this draft manual to a public consultation process. Hence, gas licensees and other interested stakeholders would have opportunity to make submissions to the Authority on issues related to reporting and publishing information.

The Reference Group suggested that the last sentence in clause 25 of the electricity retail licence template was redundant given that a review clause exists in the electricity retail licence template. The Authority agrees with the Reference Group.

Recommendation 38

Insert clause 25 of the electricity retail licence template amended as per the Reference Group's recommendations.

5.39 Review of Authority's decisions (Clause 27 of the electricity retail licence template)

Summary

Clause 27 of the electricity retail licence template permits a licensee to seek a review of a reviewable decision (as defined under a licence) by the Authority and specifies a procedure for doing so.

Discussion

Consistent with principles of best practice regulation in terms of accountability and transparency, the Authority considers it appropriate that specific decisions it makes should be subject to internal as well as independent review. Consequently, the Authority proposes to insert a provision into a gas trading licence consistent with clause 27 of the electricity retail licence template.

Recommendation 39

Insert.

6 Review of Gas Distribution Licence Terms and Conditions

6.1 Interpretation (Clause 1)

Summary

Clause 1 defines the terms used throughout the distribution licence.

Discussion

Clause 1 will require consequential amendment to reflect amendments to licence terms and conditions.

Recommendation 40

Amend as required.

6.2 Licence area (Clause 2)

Summary

Clause 2 specifies the geographic area to which the licence applies.

Discussion

No material differences exist between gas and electricity licences on this matter.

Recommendation 41

Transfer licence area details to a Schedule, consistent with the electricity licence template.

6.3 Term (Clause 3)

Summary

Clause 3 specifies the term of the licence.

Discussion

Different licence terms exist between gas distribution (21 years) and electricity distribution licences (30 years). However, as the Act and EIA 2004 prescribe the respective licence terms, consistency cannot be achieved through licence amendment.

Recommendation 42

Transfer licence term details to a Schedule, consistent with the electricity distribution licence template.

6.4 Licence fees (Clause 4)

Summary

Clause 4 states that licence fees are to be determined under section 11Q of the Act.

Discussion

The fee provision (clause 4) in the electricity licence template states that the licensee must pay applicable fees in accordance with the *Electricity Industry (Licensing Fees) Regulations 2005*. The comparable gas licence fee regulations are *Energy Coordination (Licensing Fees) Regulations 1999*.

Recommendation 43

Amend clause 4 consistent with the electricity distribution licence template.

6.5 Notices (Clause 5)

Summary

Clause 5 specifies the notices provisions applicable to the licence.

Discussion

Matter is addressed in the electricity distribution licence template by way of a definition of notice.

Recommendation 44

Amend consistent with the definition of “notice” within the electricity distribution licence template.

6.6 Licence Review (Clause 6)

Summary

Clause 6 requires the Authority and a distributor to meet at prescribed intervals to review and discuss matters relevant to the licence.

Discussion

As there are no impediments to the Authority and a distributor meeting to discuss licence matters at any point in time, the provision is considered redundant.

Recommendation 45

Delete.

6.7 Continuous Operation (Clause 7)

Summary

Clause 7 requires a distributor to continuously operate a licensed gas distribution system except in prescribed circumstances.

Discussion

The Authority notes that no comparable obligation exists with respect to the electricity distribution licence template. However, the Authority considers this obligation to be fundamental to the operation of the gas market and therefore proposes its retention.

Recommendation 46

Retain.

6.8 Obligation to connect (Clause 8)

Summary

Clause 8 imposes specific obligations upon a distributor to connect residential customers in prescribed circumstances. The key parameters being:

- a distributor must connect a customer using the least cost connection;
- the connection cost should not exceed \$650 which the distributor is required to bear. (The obligation also applies to connections exceeding \$650, provided the trader or the customer pays the difference); and
- the connection requires 20m or less of service pipe.

Discussion

The Authority notes that a comparable obligation exists in relation to the connection of customers to an electricity distribution system which is established by the *Electricity Industry (Obligation to Connect) Regulations 2005*. There are however key differences between the two obligations:

- the electricity obligation applies to < 160MWh customers and is not limited to residential customers unlike gas;
- the distance component in electricity is greater – 100m; and
- the electricity distributor bears no minimum cost, this is payable by the customer.

Industry has raised a number of issues with respect to the operation of clause 8, as follows:

- the sub-division of properties has had the effect of extending the obligation beyond road frontages; and
- the requirement for the distributor to bear the connection cost or \$650 may restrict the expansion of gas distribution systems in regional areas, where gas tariffs must compete with uniform electricity tariffs and situations where the electricity customer pays the connection cost.

The Authority also questions whether:

- an obligation to connect is a policy matter for the regulator, given that both the gas and electricity obligations were established by Government; and
- such obligations should be imposed by way of a licence condition or would be more appropriately dealt with under a Code of Conduct or regulation, as is the case with electricity.

The Authority notes that customer connections, especially for residential customers, is a sensitive issue. Therefore, the Authority does not propose to make a recommendation on the matter until it has the benefit of stakeholder input.

Matters that the Authority seeks stakeholder input include:

- should the Regulator or Government determine the extent of the obligation?
- should the existing obligation be amended consistent with electricity in terms of distance and the requirement that the customer must pay the least (total) cost of connection?
- should the existing obligation apply to existing licensees but not to future licensees?

The outcome of public consultation on the matter will be an important determinant as to the Authority's position on retention, amendment or repeal of clause 8. It should be noted however, that costs and benefits should be considered in the stakeholder's consideration of this issue.

Recommendation 47

The Authority seeks public comment as to the continued operation of clause 8.

6.9 Third party access (Clause 9)

Summary

Clause 9 deals with third party access and the procedure to follow in case of a dispute for non-covered gas distribution systems.

Discussion

With the enactment of the *Gas Pipelines Access (Western Australia) Act 1998* a separate statutory regime exists which provides for third party access to covered pipeline systems.

While the Authority understands that the original intent was to provide a mechanism for resolving disputes over access to very small distribution systems, which were unlikely to be covered because of their size, this nonetheless results in duplication of the regulatory environment.

Consequently, the Authority proposes that clause 9 be deleted.

Recommendation 48

Delete.

6.10 Service standards (Clause 10)

Summary

Clause 10, amongst other matters, requires a distributor to use best endeavours to maintain a level of customer service at least consistent with the AGA Code, except where the Authority permits otherwise.

Discussion

Refer section 5.10.

Recommendation 49

- That the AGA Code ceases to apply to small use customers.
- The *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* be amended to create an Energy Code of Conduct.
- That at the time that the Energy Code of Conduct is created, all distribution licence provisions which refer to the AGA Code be repealed and replaced with a single licence provision which requires compliance with the Energy Code.
- Clause 10 be amended to insert provisions relating to amendment of a customer service charter consistent with clause 13 of the electricity distribution template.

6.11 Complaints handling process (Clause 11)

Summary

Clause 11 requires a distributor to establish a complaints handling process applicable to prescribed persons.

Discussion

The Authority notes that clause 11 was established prior to the creation of the statutory Gas Industry Ombudsman Scheme¹² and the subsequent extension of that scheme to include electricity.

¹² Refer Part 2D and Schedule 2B of the Act.

The Authority notes that this matter is addressed with respect to electricity within the *Code of Conduct for the Supply of Electricity for Small Use Customers 2004*. Consistent with recommendation 11, the Authority considers that a distributor's internal complaints handling procedures are more appropriately addressed within an Energy Code of Conduct.

Recommendation 50

Delete and replace with a single licence provision which requires a distributor to comply with an Energy Code of Conduct, which deals with internal complaints handling procedures. The amendments should occur at the time the Energy Code takes effect.

6.12 Asset Management System (Clause 12)

Summary

Clause 12 requires the implementation of an asset management system by a distributor as required by section 11Y of the Act, within 12 months of the initial licence grant.

Discussion

Clause 19 of the electricity distribution licence template, amongst other matters, specifies a set timeframe on reporting of the asset management system as follows:

- a licensee must notify the Authority of an asset management system within 2 business days from the commencement date or from the completion of construction of a distribution system; and
- a licensee must notify the Authority of any material change to the asset management system within 10 business days.

The Authority considers that standardisation of asset management audits and guidelines will:

- reduce compliance costs borne by licensees by enabling the same audit process to be used across the energy sector;
- reduce the Authority's administration costs by providing a uniform compliance assessment framework for energy licences; and
- enable the Authority to benchmark the effectiveness of the licensee's asset management systems.

Recommendation 51

Amend as per clause 19 of the electricity distribution licence template.

6.13 Annual information returns (Clause 13)

Summary

Clause 13 requires a trader to provide information in Schedule 3 for each financial year by no later than 31 August.

Schedule 3 contains specific information to be provided by a distributor on an annual basis.

Discussion

Refer section 5.15.

Recommendation 52

Retain pending completion of the Utility Regulators Forum review of information reporting.

6.14 Future development of the licensed distribution system (Clause 14)

Summary

Clause 14 requires that a distributor:

- (a) must use reasonable endeavours to continue to plan for future expansion of a distribution system and to seek opportunities to expand the coverage of the licensed distribution system within the licensed area; and
- (b) must where reasonably practicable undertake any activities under (a) in accordance with the Office of Energy Guidelines for the *Design and Planning of Interconnected Gas Distribution Networks dated February 2000*.

Discussion

At this stage, the Authority does not have a view on the continued application of the *Design and Planning of Interconnected Gas Distribution Networks dated February 2000* and seeks stakeholder input to assist its deliberations. The outcome of public consultation on the matter will be an important determinant as to the Authority's position on clause 14.

Recommendation 53

The Authority seeks public comment on the need for clause 14 before forming a position on the matter.

6.15 Financial and technical resources (Clause 15)

Summary

Clause 15 requires that a distributor:

- (1) must have and continue to have the financial and technical resources to meet current and foreseeable obligations;
- (2) if the distributor is not the operator, the distributor must ensure that the operator has and continues to have technical resources sufficient to meet current and reasonably foreseeable obligations that might arise in relation to its activities the subject of this licence;
- (3) must ensure that its employees, agents and subcontractors are competent persons;
- (4)(a) provide written evidence to show the distributor maintains financial and technical resources within 2 weeks of the request by the Authority; and
- (4)(b) notify the Authority immediately of a significant reduction in the financial or technical resources impacting on the distributor's obligations.

Discussion

Section 11S of the Act states that the Authority must not grant a licence unless the licensee has, and is likely to retain, the financial and technical resources to undertake the activities authorised by the licence. Clause 15(1) imposes an obligation upon a distributor to ensure that it possesses financial and technical capability on an ongoing basis.

The Authority notes that no comparable provision to clauses 15(1), (2), (3) and (4)(a) exists within the electricity distribution template.

Industry has argued that clauses 15(1)-(4) should be deleted on the basis that it is unclear what measures and standards are to be used to determine compliance with these provisions and importantly, who will determine compliance or otherwise. Industry considers that the matter is already dealt with under the *Corporations Act 2001* which imposes relevant obligations on directors and officers of a corporation.

The Authority considers the concerns expressed by industry to be generally valid.

The Authority further notes that the distribution licence provides a direct incentive to ensure that a distributor engages a competent operator on its behalf, as the distributor is liable for any breach of licence as a result of the operator's activities.

In terms of clause 15(4), the Authority notes that clause 20 of the electricity distribution licence template requires that a licensee must report to the Authority if:

- the licensee is under external administration within 2 business days; and
- the licensee experiences a change in corporate, financial or technical circumstances within 10 business days.

To provide for greater consistency between gas and electricity licences, the Authority recommends that clause 15(4) be amended consistent with clause 20 of the electricity distribution licence template.

Recommendation 54

- Delete clauses 15(1), (2) and (3).

- Amend clause 15(4) consistent with clause 20 of the electricity licence template.

6.16 Insurance (Clause 16)

Summary

Clause 16 requires that a distributor possesses adequate property and liability insurance and provide such details to the Authority upon request.

Discussion

Refer section 5.19.

Recommendation 55

Delete.

6.17 Compliance with Technical Standards (Clause 17)

Summary

Clause 17 requires that a distributor complies with various obligations specified within Schedule 4 of the licence until such time as the *Gas Standards (Gas Supply and System Safety) Regulations 2000* were enacted.

Discussion

The *Gas Standards (Gas Supply and System Safety) Regulations 2000* took effect in 2000, therefore clause 17 is spent.

Recommendation 56

Delete.

6.18 Technical and safety conditions and notification of events (Clause 18)

Summary

Clause 18 requires that a distributor complies with various obligations specified within Schedules 5 and 6 of the distribution licence until such time as the *Gas Standards (Gas Supply and System Safety) Regulations 2000* come into effect.

Discussion

The *Gas Standards (Gas Supply and System Safety) Regulations 2000* took effect in 2000, therefore clause 18 is spent.

Recommendation 57

Delete.

6.19 Accounting (Clause 19)

Summary

Clause 19 requires a distributor to:

- determine all income, expenses, assets and liability relating to the activities under the licence;
- segregate the distributor's income, expenses, assets and liabilities relating to the licence as distinguished from the distributor's other business activities;
- prepare annual financial statements consistent with AASB 1034 and AASB 1035;
- obtain a report from an auditor approved by the Authority to provide an opinion on its compliance with the accounting standards and licence and that transfer payments between business units of the licensee are true and accurate; and
- provide a copy of the auditor's report by no later than 31 October each year or other date as approved by the Authority.

Discussion

Refer section 5.20.

Recommendation 58

Amend as per clause 16 of the electricity distribution licence template.

6.20 Performance criteria (Clause 20)

Summary

Clause 20 specifies the performance criteria that are to be subject of a periodic performance audit mandated by section 11ZA of the Act.

Discussion

Refer section 5.21.

Recommendation 59

Amend as per clause 17 of the electricity distribution licence template.

6.21 Amendment of licence (Clause 21)

Summary

Clause 21 refers to amendment or substitution of a licence by the Authority and specifies the procedure for doing so.

Discussion

Refer section 5.22.

Recommendation 60

Amend consistent with clauses 10 and 11 of the electricity distribution licence template.

6.22 Exchange of information between the licensee and the holder of a trading licence (Clause 22)

Summary

Clause 22 requires that a distributor must provide information to the holder of a trading licence consistent with sections 5.9(a) and (b) of the *National Third Party Access Code for Natural Gas Pipeline Systems* established by the *Gas Pipelines Access (Western Australia) Act 1998* for a non-covered system.

Discussion

The Authority understands that the intent of clause 22 was to enable a trader to have access to information on spare and developable capacity for non-covered systems to the extent equivalent to a covered system.

The Authority is of the view that the provision of information on spare and developable capacity to a trader is necessary to support a competitive gas market and supports its retention.

Recommendation 61

Retain.

6.23 Indemnity (Clause 23)

Summary

Clause 23 requires a distributor to indemnify the State of Western Australia, the Minister for Energy, the Authority's Chairman, the Authority and its, agents and contractors against liability resulting from the distributor's activities under the licence.

Discussion

Refer section 5.24.

Recommendation 62

Delete.

6.24 Proposed cessation or decrease in activities (Clause 24)

Summary

Clause 24 requires a distributor to notify the Authority in writing where it proposes a permanent cessation or substantial decrease in licensed activity.

Discussion

The Authority notes that clause 19.2 of the electricity distribution licence template requires a distributor to notify the Authority of any material change to the asset management system within 10 business days of such change.

Furthermore, the Authority notes that regulation 22 of the *Gas Standards (Gas Supply and System Safety) Regulations 2000* requires a network operator (which includes a licensed distributor) to notify the Director of Energy Safety of proposed major activities. However, this provision appears to be limited to construction of new infrastructure as opposed to decommissioning.

As a permanent cessation or substantial decrease in licensed activity can have a material impact on the supply of gas to small use customers, the Authority proposes its retention.

Recommendation 63

Retain.

6.25 Surrender of licence (Clause 25)

Summary

Clause 25, amongst other matters, specifies that a distributor may:

- at any time surrender its licence in whole or in part; and
- upon licence surrender, be required to comply with one or more of the following:
 - pay all amounts due under the Act; and
 - comply with terms and conditions of the licence, Act and regulations.

Furthermore, the clause enables the Authority to direct a distributor to publish a notice in a newspaper regarding the licence surrender and allow at least one month for any interested person to comment.

Discussion

Refer section 5.25.

Recommendation 64

Amend as per clause 8 of the electricity distribution licence template.

6.26 Statutory services plan (Schedule 2)

Summary

Schedule 2 contains licence area details.

Discussion

Refer section 5.27.

Recommendation 65

Standardise licence area map numbering system between gas distribution and electricity distribution licences.

6.27 Information to be contained within annual information returns (Schedule 3)

Summary

Schedule 3 specifies the annual information returns that a distributor must comply with.

Discussion

Refer section 6.13.

Recommendation 66

Retain pending completion of the Utility Regulators Forum review of information reporting.

6.28 Work specifications (Schedule 4)

Summary

Schedule 4 specifies the Codes and Australian standards that a distributor must comply with.

Discussion

Refer section 6.17.

Recommendation 67

Delete.

6.29 Safety and technical provisions (Schedule 5)

Summary

Schedule 5 specifies the safety and technical provisions that a distributor must comply with.

Discussion

Refer section 6.18.

Recommendation 68

Delete.

6.30 Notification, reporting and investigation of incidents (Schedule 6)

Summary

Schedule 6 specifies a reporting regime with respect to notifiable incidents.

Discussion

Refer section 6.18.

Recommendation 69

Delete.

6.31 Summary of key statutory provisions (Schedule 7)

Summary

Schedule 7 provides a summary of key statutory provisions that effect a gas distribution licence.

Discussion

Refer section 5.31.

Recommendation 70

Delete.

ELECTRICITY DISTRIBUTION LICENCE PROVISIONS THAT HAVE NO GAS DISTRIBUTION LICENCE EQUIVALENT

6.32 Compliance (Clause 5 of the electricity distribution licence template)

Summary

Clause 5 of the electricity distribution licence states that a distributor must comply with applicable legislation.

While this is a potential duplication of regulation, the advantage of such a provision is that, if a licensee does not comply with applicable legislation, the Authority has the power to direct a licensee in writing to correct any breach or prevent a further breach within a specified timeframe.

Discussion

Refer section 5.32.

Recommendation 71

Insert.

6.33 Transfer of licence (Clause 6 of the electricity distribution licence template)

Summary

Clause 6 of the electricity distribution licence template specifies that a licence may only be transferred in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a distribution licence for completeness.

Recommendation 72

Insert.

6.34 Cancellation of licence (Clause 7 of the electricity distribution licence template)

Summary

Clause 7 of the electricity distribution licence template specifies that a licence may only be cancelled in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a distribution licence for completeness.

Recommendation 73

Insert.

6.35 Renewal of licence (Clause 9 of the electricity distribution licence template)

Summary

Clause 9 of the electricity distribution licence template specifies that a licence may only be renewed in accordance with the Act.

Discussion

This is a routine procedural matter that should be included within a distribution licence for completeness.

Recommendation 74

Insert.

6.36 Approved scheme (Clause 14 of the electricity distribution licence template)

Summary

Clause 14 specifies that a distributor must not supply electricity to a small use customer unless the distributor is:

- a member of an approved electricity Ombudsman scheme; and
- bound by, and compliant with, any decision or direction of the electricity Ombudsman under the approved scheme.

Discussion

No comparable provision exists under a gas distribution licence. However, for consistency between gas and electricity, it is proposed to include a similar provision within a gas distribution licence.

Recommendation 75

Insert.

6.37 Publishing information (Clause 22 of the electricity distribution licence template)

Summary

Clause 22 of the electricity distribution licence template provides that the Authority may direct a distributor to publish any information within a specified timeframe it considers relevant in connection with the licence or performance by the distributor of its obligations under the licence. In the event that a distributor considers information to be confidential, the distributor must notify the Authority or seek a review of the Authority's decision.

Discussion

No comparable provision exists under a gas distribution licence.

Refer section 5.38.

Recommendation 76

Insert.

6.38 Review of Authority's decisions (Clause 24 of the electricity distribution licence template)

Summary

Clause 24 of the electricity distribution licence template permits a distributor to seek a review of a reviewable decision (as defined under a licence) by the Authority and specifies a procedure for doing so.

Discussion

Refer section 5.39.

Recommendation 77

Insert.

7 Statutory licence conditions

In addition to the conditions contained within a gas trading and distribution licence, there are a number of conditions imposed upon a licensee by statutory instruments.

The Authority has no role in the imposition or amendment of these conditions, as these are a matter for Government. In summary, the mandatory licence conditions are:

1. a requirement upon a trader to not supply gas to a small use customer other than under a standard form contract approved by the Authority or a non standard form contract that complies with the Act. Refer section 11WG(1) of the Act;
2. a requirement upon a trader to comply with a direction made by the Authority to amend a standard form contract. Refer section 11WG(2) of the Act;
3. a requirement upon a distributor to establish an asset management system and conduct a review of that system at a minimum of once every 24 months. Refer section 11Y of the Act;
4. a requirement upon a trader and a distributor to comply with the standards under the *Gas Standards Act 1972*. Refer section 11Z of the Act;
5. a requirement upon a trader and a distributor to conduct a performance audit not less than once in every 24 months. Refer section 11ZA of the Act;
6. a requirement upon a trader to comply with any last resort obligations imposed under Part 2A Division 6A of the Act. Refer section 11ZAJ of the Act;
7. a requirement upon a trader to comply with the *Gas Marketing Code of Conduct 2004*. Refer section 11ZPP of the Act;
8. a requirement upon a trader and a distributor be a member of an approved Ombudsman scheme. Refer section 11ZQH(a) of the Act; and
9. a requirement upon a trader and a distributor to be bound by, and comply with, any decision or direction of the gas industry ombudsman. Refer section 11ZQH(b) of the Act.

While the Authority has no role in the imposition or amendment of the above statutory licence conditions, it has nonetheless considered their appropriateness. The only matter that the Authority seeks to bring to the attention of Government is item 4.

The Authority considers it inappropriate for licence regulation to make an existing law the subject of another law. The Authority notes that a licensee's breach of the *Gas Standards Act 1972* will result in a separate breach of a gas trading and distribution licence, potentially making a licensee liable for a breach of law under two different statutory regimes. The Authority considers this to be duplication of regulation. The Authority further notes that the EIA 2004 contains no comparable provision to section 11Z of the Act.

Recommendation 78

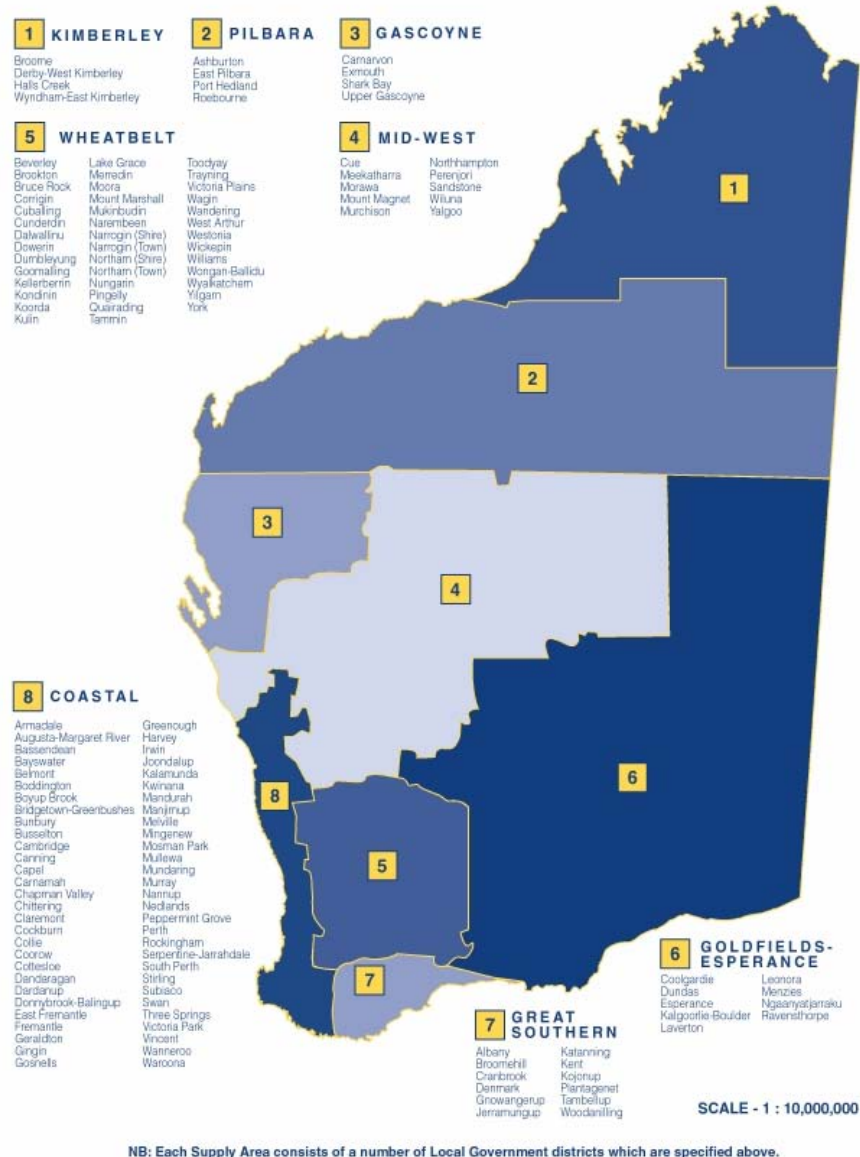
That Authority considers, in view of potential regulatory duplication, the appropriateness of section 11Z of the Act as a mandatory licence condition.

8 Supply Areas

A Supply Area is a geographic area established by the Governor by way of an Order published in the Government Gazette under Part 2A Division 1 of the Act.

The Authority has no role in the creation of Supply Areas. This is a matter of Government.

Figure 2: Western Australian Gas Supply Areas



Under section 11E of the Act, the Authority may only grant a gas trading or distribution licence within a Supply Area to apply to:

- (a) one or more Supply Areas; or
- (b) one or more parts of one or more Supply Areas.

The Act was amended by Government in 2003 to overcome a major limitation in the gas licence framework, which now permits a single gas trading or gas distribution licence to apply within any Supply Area or parts of any Supply Area.

The ability to grant single licences over multiple geographic areas can considerably reduce the number of individual licences held by a trader or distributor and administered by the Authority.

The Authority notes that the Supply Area concept has not been included within the EIA 2004. While the Authority considers that the need for Supply Areas are likely to be redundant, it would require the Act to be amended for little benefit at the present time.

9 Licence Exemptions

The Governor may, under section 11H of the Act, exempt any person or class of persons from the requirement, under section 11G, to obtain a licence.

The Authority has no role in the grant of a licence exemption. This is a matter for Government.

To date, only a single gas trading and distribution licence exemption has been granted.¹³

Industry has sought clarification from the Authority as to whether gas licences are required in relation to a supply situation whereby a trader sells gas to a third party who then on-sells gas to persons located within a site controlled or owned by the on-seller. Such supply situations can include:

- strata-title properties;
- retirement villages;
- caravan parks;
- industrial parks
- airports; and
- sporting facilities.

The Authority notes that the matter is not free from doubt as to whether a gas licence is required under Part 2A of the Act.

The Authority further notes that the Government has specifically addressed the same issue with respect to the sale of electricity in similar supply situations through the enactment of the *Electricity Industry Exemption Order 2005*.

The Authority notes however, that there are other ways to account for on-selling arrangements such as amending the licence framework to establish a third licence category or developing a regulatory protection arrangement for the customers of on-sellers.

Recommendation 79

To provide for consistency of energy regulation, the Authority recommends that Government considers enactment of a gas licence exemption on a similar basis as to the on-sale of electricity or through another regulatory protection arrangement.

¹³ Refer *Energy Coordination (Rottneest Island Authority) Exemption Order 2001*.

10 Licence fees

The *Energy Coordination (Licensing Fees) Regulations 1999* prescribes the fees applicable to gas licences. The fees are summarised in Table 2.

Table 2: Gas trading and distribution licence fees

Application fees	
Application for the grant, transfer or renewal of a licence	\$375
Application for the amendment of a licence	\$500 or 10% of the annual licence fee (whichever is the greater)
Annual distribution licence fee	
If the Distribution system length is:	
Less than 5 km	
<ul style="list-style-type: none"> ▪ distribution network transporting gas to small use customers only 	\$150
<ul style="list-style-type: none"> ▪ in any other case 	\$1 500
5 km or more but less than 20 km	\$2 250
20 km or more but less than 100 km	\$3 750
100 km or more	\$7 500
Annual trading licence fee	
If the number of customers is:	
Less than 100	\$150
100 or more but less than 500	\$1 500
500 or more but less than 2 000	\$3 000
2 000 or more	\$4 500

The *Electricity Industry (Licensing Fees) Regulations 2005* prescribes the fees applicable to electricity retail and distribution licences and are summarised in Table 3.

Table 3: Electricity retail and distribution licence fees

Application fees	
Application for the grant, transfer, amendment or renewal of a licence	\$500
Annual distribution licence fee	
If the Distribution system length is:	
Less than 1 km	\$500
Not less than 1 km but less than 10 km	\$5 000
Not less than 10 km but less than 100 km	\$10 000

Not less than 100 km but less than 1 000km	\$20 000
Not less than 1 000 km	\$25 000
Annual retail licence fee	
If the number of customers is:	
Less than 100	\$1 000
Not less than 100 but less than 1 000	\$7 500
Not less than 1 000 but less than 5 000	\$12 500
Not less than 5 000 but less than 25 000	\$20 000
Not less than 25 000	\$35 000

As gas and electricity licence fees are quite different for similar sized networks or customer bases, the Authority considers it appropriate, as it is responsible for the licence fee structures specified within the respective licence fee regulations, for Government to review the current gas fee structure.

The Reference Group consider that retail licence fees should be linked to performance indicators that reflect the cost of service or revenue generated.

Recommendation 80

Government to consider the need to revise the gas licence fee structure.

11 Key differences between gas and electricity legislative frameworks

As discussed earlier, gas licenses are far more prescriptive than electricity licences. This is mainly due to differences in the statutory frameworks for gas and electricity. For example, where the electricity statutory framework provides for the making of codes and enforcement of those codes by way of licence condition, the gas regulatory framework tends to rely upon the licences themselves for the imposition of conditions on licensees.

The following highlights a number of key differences between the gas and electricity statutory frameworks and the extent to which they affect both licensing schemes.

11.1 Licensed activities

The scope of the electricity licensing framework is substantially wider than gas.

Under both frameworks, operators require a licence for the construction and operation of a distribution system and the sale of energy to small use customers.

However, persons operating in the electricity market also require a licence for the construction and operation of generating and transmission works and the sale of electricity to customers other than small use customers.

Table 4: Comparison of Gas and Electricity Licence classifications

Scope of licensing framework					
	Generation	Transmission	Distribution	Trading/Retail	Integrated Regional
Gas	x	x ¹⁴	✓	✓ ¹⁵	x
Electricity	✓	✓	✓	✓	✓

Under the electricity framework, persons operating in areas outside of the South West interconnected system can apply for an integrated regional licence. An integrated regional licence authorises a person to carry out various activities under a single licence.

11.2 Maximum duration of licence

As illustrated in the following table, the maximum duration for electricity licences is considerably longer than that for gas licences.

¹⁴ The Department of Industry and Resources administers a licensing framework for gas transmission pipelines.

¹⁵ A licence is only required for the sale of gas to small use customers

Table 5: Comparison of Gas and Electricity Licence Duration

Maximum duration of licences					
	Generation	Transmission	Distribution	Trading/Retail	Integrated Regional
Gas	n/a	n/a	21 years	10 years	n/a
Electricity	30 years	30 years	30 years	15 years	30 years

Recommendation 81

That Government considers legislative change to the Act to make the maximum duration of licences consistent between gas and electricity.

11.3 Licence conditions

Both electricity and gas licences may be subject to statutory licence terms and conditions and terms and conditions imposed by the Authority. The EIA 2004 specifically provides for electricity licences to be subject to terms and conditions imposed by way of regulation.

Section 12 of the EIA 2004 authorises regulations to be made prescribing licence terms and conditions. No explicit head of power is contained within the Act.

This regulation making power allows Government to achieve policy objectives through the imposition of licence terms and conditions. It also ensures Government can impose its policy objectives independent from the Authority.

As the Act does not contain specific powers, it is unclear whether terms and conditions may be imposed by regulations upon gas licences.

Recommendation 82

That Government considers legislative change to the Act to insert a head of power consistent with section 12 of the EIA 2004 to clarify this.

11.4 Codes

The electricity regulatory framework provides the Authority with the heads of power to prepare and issue codes in respect of a number of prescribed matters. If the Authority fails to prepare and issue a code in respect of any of the prescribed matters, the Minister for Energy may do so. These matters are dealt with under Part 2 Division 7 of the EIA 2004.

A list of electricity codes enacted to date, relevant to the licence framework, is included in section 2.2.1.

Compliance with the codes is enforceable by way of licence condition. The ability to make codes which deal in depth with prescribed matters has, to a large extent, removed the need for prescriptive electricity licences.

With the exception of the *Gas Marketing Code of Conduct 2004*, the gas regulatory framework does not provide for the making of codes which may be enforced by way of licence condition. As a result, the gas licensing framework is far more prescriptive than that for electricity.

Recommendation 83

That Government considers legislative change to the Act to insert a head of power consistent with Part 2 Division 7 of the EIA 2004.

11.5 Customer protection

One of the electricity codes enforceable as a licence condition is the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*. This code regulates and controls the conduct of electricity licensees and marketing agents in the marketing and supply of electricity and was established under Part 6 of the EIA 2004.

With respect to gas, the Act only provides the heads of power to make a code with respect to the marketing of gas. For standards relating to supply, the gas regulatory framework continues to rely upon the AGA Code. However, for the reasons stated earlier the AGA Code is considered obsolete.

Recommendation 84

That Government considers legislative change to the Act to insert a head of power consistent with Part 6 of the EIA 2004.

11.6 Review of licence decisions

At present, review of decisions made by the Authority with respect to licences fall under the jurisdiction of two different bodies.

For appeals against decisions relating to a gas licence, the licensee must apply to the State Administrative Tribunal for a review of the decision. If a licensee wishes to appeal a decision with respect to its electricity licence, it must apply to the Gas Review Board.

Recommendation 85

That Government considers legislative change to the EIA 2004 to provide for a review of electricity licence decisions by the State Administrative Tribunal consistent with gas and water licence reviews.