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GAS RETAILERS OF LAST RESORT FOR THE NON-PRINCIPAL TRANSMISSION SYSTEM AREAS

FINAL DECISION

JUNE 2009

An appropriate citation for this paper is:

Essential Services Commission 2009, *Gas retailers of last resort for the non-principal transmission system areas: final decision*, June

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1.1 Background

Under section 51D of the *Gas Industry Act 2001* (GI Act), the Essential Services Commission (the Commission) can designate a retailer as the retailer of last resort (RoLR) in certain circumstances as a condition of the retailer's licence. Clause 13 of a gas retail licence imposes an obligation on the licensee, when directed to do so by the Commission, to sell gas to customers in certain circumstances when their original retailer fails. Therefore, the Commission can, through a written direction, appoint a retailer to be the RoLR for a specified geographic area.

In February 2006, the Commission made its final decision on an electricity and gas RoLR scheme for Victoria (February 2006 RoLR decision).¹ The key decisions made by the Commission for the gas industry were:

- RoLR responsibilities were assigned to the three local retailers, AGL, Origin Energy and TRUenergy, and
- in the event of a non-local retailer failure in the gas industry, the customers of the failed non-local gas retailer will be allocated to the gas retailer who has the local retailer responsibility for the area where the customer is located.²

The three local retailers were assigned RoLR responsibilities because they had a legislative obligation at that time to supply customers in defined areas, in the event that customers were unable to access supply through the competitive market. Local retailers, and therefore their obligation to supply, are defined by reference to the franchise area specified in that retailer's licence in place immediately prior to 1 October 2002, identified by postcodes.³

¹ Essential Services Commission 2006, *Energy retailer of last resort final decision*, February

² An Order in Council made on 29 October 2002 under section 42(5) of the *Gas Industry Act 2001* (Victorian Government Gazette No. S 197) specifies small customers in relation to the local retailers' franchise areas as they were defined in their licences prior to 1 October 2002.

³ The Commission notes that both the GI Act and the *Electricity Industry Act 2000* (EI Act) have subsequently been amended to place the obligation to supply in these circumstances on all retailers. However, the February 2006 decision will stand, as the decision to place the RoLR responsibilities on the three local retailers was based on the principle that they are in the best position to provide RoLR services because of their market size, financial position, system capacity and ability to support taking on large numbers of customers at short notice.

1.2 RoLRs for the gas distribution areas

The gas sector is divided into the principal transmission system (PTS) and the non-principal transmission system (non-PTS). In implementing the February 2006 decision, the Commission found that the allocation of RoLR responsibilities in the gas sector required separate decisions to be made with respect to allocating RoLRs for the PTS and non-PTS areas.

1.2.1 RoLR for the principal transmission system (PTS)

The PTS is a network of transmission pipelines that existed prior to the Victorian Government's reform of the gas industry in 1994 and supplies gas to Gippsland, Melbourne, Central and Northern Victoria, Albury, the Murray Valley region, Geelong and South Western Victoria.

In September 2008, the Commission made a final decision allocating RoLR responsibilities to AGL, Origin Energy and TRUenergy based on distribution network area.⁴ This final decision addressed relevant matters for the PTS within the distribution network area.

1.2.2 RoLR for non-PTS areas

Since 1994, new pipelines have been built for new pipeline owners. This network of new pipelines is known as the non-PTS and they are operated in accordance with contracts established between the pipeline owner and its customers, usually gas retailers. Gas is supplied to retail customers in accordance with Gas Market Retail Rules (Non-PTS) developed by the distributor and approved by the Commission. VENCORP may administer these rules if the pipeline owner has an adjunct agreement with VENCORP. The non-PTS may inject gas into or withdraw gas from the PTS, subject to connection agreements with GasNet and VENCORP.

There are four non-PTS pipelines supplying gas to Victoria:⁵

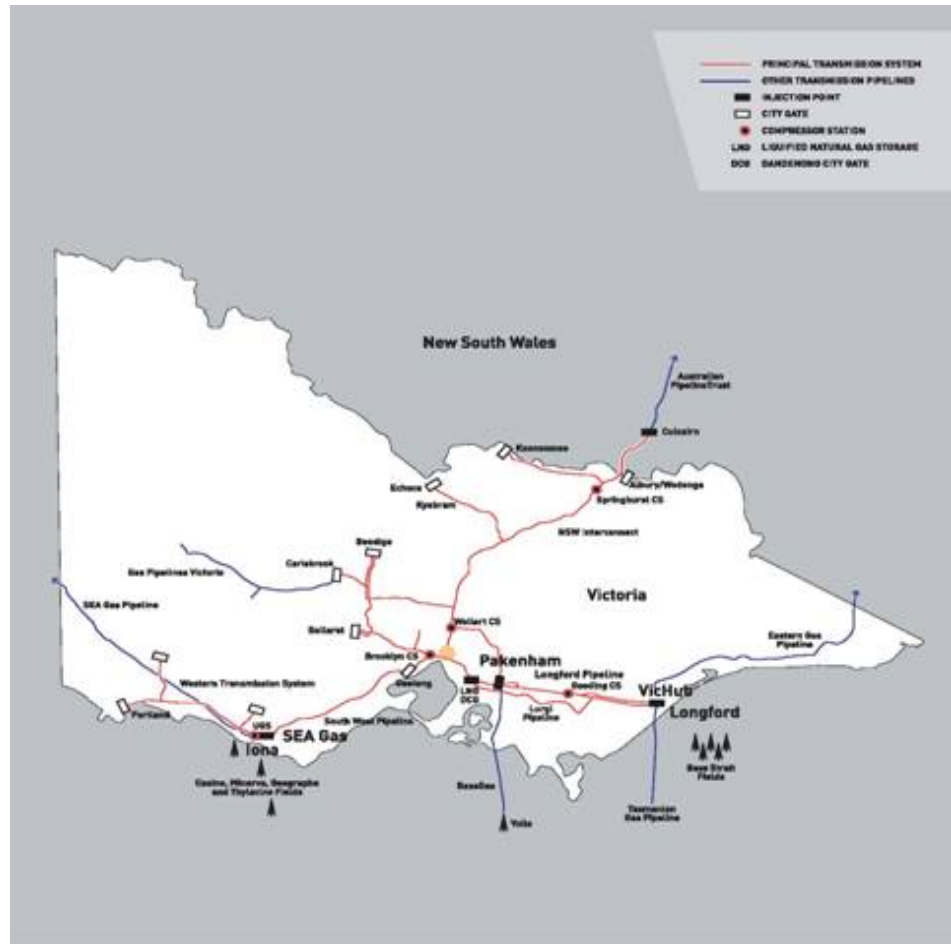
- Gas Pipelines Victoria pipeline from Carisbrook to Horsham
- Mildura Gas Distribution Network supplied from the Moomba to Adelaide pipeline
- Bass Gas pipeline from the Lang Lang Gas Plant to Pakenham
- Eastern Gas pipeline from Longford to New South Wales, via Bairnsdale

The network of PTS and the non-PTS are shown in Box 1.1. The geographic areas supplied with gas from the non-PTS pipelines are detailed in Appendix A.

⁴ Essential Services Commission 2008, *Geographic boundaries for gas retailers of last resort final decision*, September

⁵ Another two non-PTS pipelines in Victoria supply gas to other states: the SEA Gas pipeline from Iona to Adelaide and the Tasmania Gas pipeline from Longford to Tasmania.

Box 1.1 PTS and non-PTS network in Victoria



Source: VENCORP

During the consultation process leading to the decision on the RoLRs for the PTS, the licensed gas distributors submitted that small customers in areas recently supplied with natural gas from non-PTS pipelines would not be protected in the event of a retailer failure, on the basis that there was no gas retailer with an obligation to supply in these non-PTS areas.

In December 2008, the Commission released a consultation paper that considered the issues arising from and the options for assigning a RoLR to the non-PTS

areas.⁶ Based on stakeholders' submissions to the consultation paper, the Commission made its draft decision on 12 February 2009 to assign RoLR responsibilities to:

- TRUenergy for Ararat, Stawell and Horsham and
- Origin Energy for Bairnsdale and Paynesville, Lang Lang and Mildura.

The Commission's draft decision in relation to Korumburra, Leongatha, Inverloch and Wonthaggi (South Gippsland) was that a RoLR would not be assigned as there were no customers in these towns with gas connections.

On 18 February 2009, the Minister for Energy and Resources announced that:

- an agreement between the gas distributor, Multinet, and gas retailer, Red Energy, to supply gas to residents in South Gippsland had been finalised and
- residents in Lang Lang, Korumburra and Leongatha initially will be connected to natural gas followed by residents in Inverloch and Wonthaggi.⁷

Consequently, on 12 March 2009, the Commission made a supplementary draft decision assigning RoLR responsibilities for South Gippsland to Origin Energy.

The Commission received submissions on the draft decisions from AGL, Envestra, Multinet, Origin Energy, TRUenergy and VENCORP.

In determining its final decision, additional information was also sought from the relevant distributors and retailers, as well as the Department of Primary Industries (DPI). The decision is based on the Commission's consideration of this information and its review of the February 2006 RoLR decision.

1.3 National developments

The Commission notes the Ministerial Council on Energy (MCE) is currently consulting on a framework for a national RoLR scheme.

However, RoLR coverage to non-PTS areas was not addressed in the proposed national RoLR scheme. Some submissions to the consultation paper considered that the Commission should wait for the MCE's decision on a national RoLR scheme. On 18 December 2008, the MCE announced that it may not be possible to introduce the First Exposure Draft of the National Energy Customer Framework into the South Australian Parliament during 2009.⁸ Therefore, there is some uncertainty in the timing of the national framework.

⁶ Essential Services Commission 2008, *Gas retailers of last resort for the non-principal transmission system areas: consultation paper*, December.

⁷ Refer to the media release titled "Natural Gas to Flow in South Gippsland" issued on 18 February 2009. The media release is available from the Department of Premier and Cabinet website at www.dpc.vic.gov.au under Media Releases.

⁸ Ministerial Council on Energy 2008, *17th Meeting Communique 12 December*, pp. 2-3.

This final decision assigns a RoLR for most of the non-PTS areas. However, as set out in chapter 2, the Commission has not allocated a RoLR for some non-PTS towns. This gap in the framework should be addressed by the MCE in the national developments.

2.1 Framework for final decision

In response to submissions from the distributors leading to the decision on the RoLRs for the PTS, the Commission considered whether it should allocate RoLR responsibilities to those non-PTS areas if there is no local retailer in the non-PTS areas with an obligation to supply. The draft decisions issued on 12 February and 12 March 2009 proposed different models of allocating the RoLR for those areas, including the local retailers' proposal that the distributors should be the retailers of last resort to customers in these areas.

In reviewing the submissions and consulting further with the DPI, distributors and retailers, the Commission has decided that the appropriate approach is to reaffirm its February 2006 RoLR decision, that is:

- RoLR responsibilities were assigned to the three local retailers, AGL, Origin Energy and TRUenergy, and
- in the event of a non-local retailer failure in the gas industry, the customers of the failed non-local gas retailer will be allocated to the gas retailer who has the local retailer responsibility for the area where the customer is located.⁹

Submissions in response to the draft decisions have been considered against this framework.

2.2 Assigning a RoLR to non-PTS areas

There are four non-PTS areas which were addressed in the draft decisions, that is

- Ararat, Stawell and Horsham
- Bairnsdale and Paynesville
- Mildura
- South Gippsland – Lang Lang, Korumburra, Leongatha, Inverloch and Wonthaggi

⁹ An Order in Council made on 29 October 2002 under section 42(5) of the *Gas Industry Act 2001* (Victorian Government Gazette No. S 197) specifies small customers in relation to the local retailers' franchise areas as they were defined in their licences prior to 1 October 2002.

Of these, TRUenergy has an obligation to supply in Ararat, Stawell and Horsham and Origin Energy has an obligation to supply in Mildura and Lang Lang, as these postcodes were included in their previously franchise licences. The draft decisions, therefore, were to assign the relevant RoLR responsibilities to these local retailers, in accordance with the February 2006 RoLR decision.¹⁰

TRUenergy submitted that it would accept its RoLR responsibilities for Ararat, Stawell and Horsham until a national RoLR scheme is established. However, it did not accept that it has an obligation to offer to supply gas to customers in these towns, citing references to the Natural Gas Extension Program (NGEP) tender process.¹¹ The Department of Primary Industries, on the other hand, confirmed to the Commission that the NGEP tender process was not intended to override the local retailers' pre-existing obligations.¹²

Origin Energy did not comment on the draft decision to assign it RoLR responsibilities for Mildura. It is noted that Origin Energy is currently supplying gas to customers in this area.

Origin Energy did express concerns about being a RoLR for South Gippsland when it does not have gas haulage and supply arrangements in place to supply this region. Origin Energy believed that, if it had to be the RoLR, it would have to sign an agreement that may include terms exposing it "...to potential costs and risks that it would not consider acceptable in normal commercial negotiations and which are inconsistent with [its] company's strategy on these matters."¹³

Further, while acknowledging that Lang Lang's postcode appeared in its original retail licence, Origin Energy submitted that it should only have to accept its obligation to supply in Lang Lang if Envestra reticulated gas in the area. This is because it argued that Envestra was historically linked to the network area for which Origin Energy (and its predecessors) had an obligation to supply. As Multinet Gas subsequently acquired the rights to reticulate gas in Lang Lang, Origin Energy considered that its obligation to supply in Lang Lang was legally extinguished.¹⁴

¹⁰ Further, given the proximity of the South Gippsland towns to Lang Lang, the Commission considered it practical that Origin Energy's RoLR responsibilities be extended from Lang Lang to all the relevant South Gippsland towns.

¹¹ TRUenergy 2009, *TRUenergy response to ESC draft and supplementary draft decision*, March, pp. 1-2

¹² The Commission also notes that Ararat, Stawell and Horsham were not one of the towns participating in the NGEP. A list of towns participating in the NGEP is listed on the Business Victoria website at www.business.vic.gov.au, under Regional Development, Regional Development Infrastructure Fund (RIDF), Announced RIDF Projects and Announced Natural Gas Extension Program (NGEP).

¹³ Origin Energy 2009, *Origin Energy submission – draft decision – gas retailers of last resort for non-principal transmission system areas*, March, p. 1

¹⁴ Ibid, p. 3

Legal advice to the Commission has verified that the previously franchise licence defined Origin Energy's supply obligations by reference to postcodes, and applies irrespective of the distributor that supplies gas to the particular postcodes. Therefore, Origin Energy does have an obligation to supply in Lang Lang.

The Korumburra, Leongatha, Inverloch and Wonthaggi postcodes were not included in Origin Energy's previously franchise licence. Therefore, the Commission agrees that it has no obligation to supply to these postcodes. Accordingly, the Commission will not assign a RoLR for these non-PTS areas.

The Commission notes that, while it does not have an obligation to supply in Bairnsdale and Paynesville, Origin Energy is selling to customers in these towns and has submitted that it understood why it would be sensible for it to assume RoLR responsibilities for Bairnsdale and Paynesville and considered it "...a practical solution to a difficult issue".¹⁵

Final decision

TRUenergy will be the RoLR in Ararat, Stawell and Horsham in the event of a non-local retailer failure.

Origin Energy will be the RoLR in Mildura and Lang Lang in the event of a non-local retailer failure.

The Commission will not assign a RoLR for those towns where a local retailer does not have an obligation to supply, but notes that for the time being, Origin Energy has voluntarily assumed the RoLR responsibilities for Bairnsdale and Paynesville.

2.3 Adjunct agreements with VENCORP

VENCORP advised that it has no jurisdiction in the non-PTS areas if there is no adjunct agreement between the pipeline owner and VENCORP. Therefore, if a retailer fails in both the PTS and non-PTS areas, VENCORP can only suspend the retailer and allocate customers to a RoLR in the PTS. This could mean that customers in the non-PTS would be disconnected from supply.

There are currently only two non-PTS areas where VENCORP does not have adjunct agreements with the pipeline owners (Ararat, Stawell and Horsham, and Mildura). However, customers in these areas are currently being supplied with gas by TRUenergy and Origin Energy. The likelihood of either of these retailers being suspended from the PTS area in the near future is relatively low.

¹⁵ Origin Energy 2009, op.cit., p. 1.

The Commission considered that this issue will only become significant for gas customers when and if there are non-local retailers selling gas in the non-PTS areas, with pipeline owners who did not have adjunct agreements with VENCORP.

2.4 Summary of final decision

The Commission's final decision regarding a RoLR for the non-PTS areas in the event of a non-local retailer failure is presented in table 2.1.

Table 2.1 Final decision: gas RoLRs for the non-PTS areas

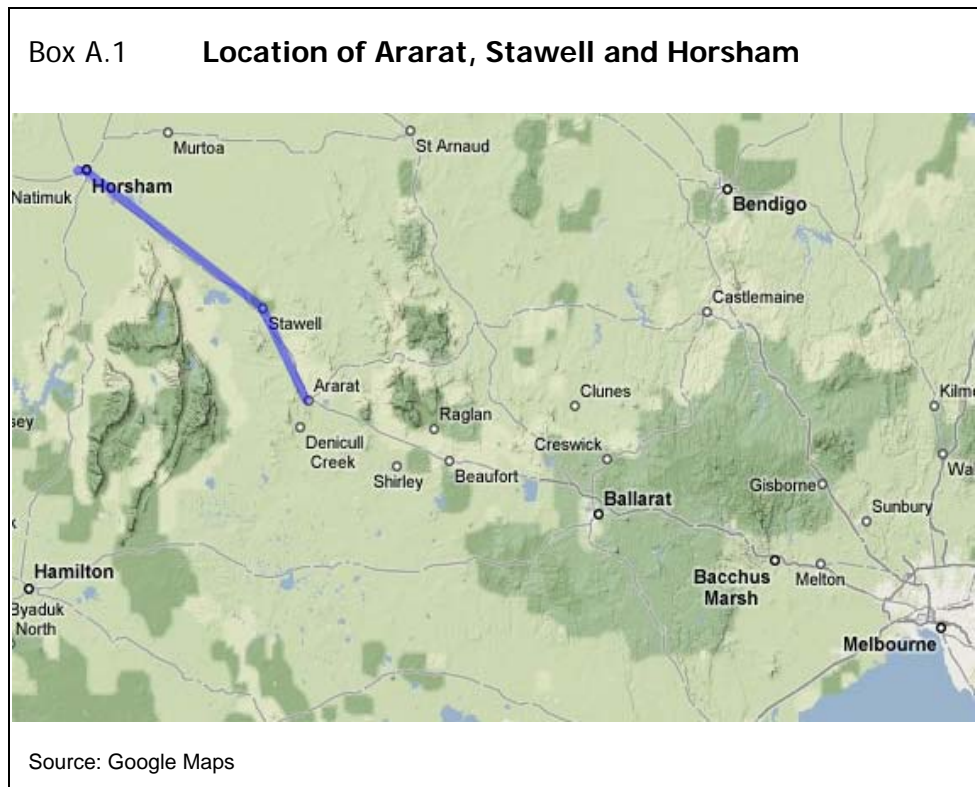
<i>Non-PTS areas</i>	<i>RoLR for non-local retailer failure</i>
Ararat, Stawell and Horsham	TRUenergy
Bairnsdale and Paynesville	Not assigned
Mildura	Origin Energy
Lang Lang	Origin Energy
Korumburra, Leongatha, Inverloch and Wonthaggi	Not assigned

APPENDIX A | NON-PTS AREAS

This section provides information about the areas serviced by the non-PTS and outlines the current situation regarding retailers selling in these areas, with or without a legislative obligation to supply.

Ararat, Stawell and Horsham

Gas Pipelines Victoria owns and operates the non-PTS pipeline carrying gas from Carisbrook (near Maryborough) to SP AusNet's distribution network in Ararat, Stawell and Horsham, in western Victoria (see Box A.1).



Currently, TRUenergy is the only retailer selling gas in these towns. TRUenergy owns the full capacity of the pipeline, which means that there is currently no spare capacity for other retailers to contract with Gas Pipelines Victoria.

The Commission notes that, as Ararat, Stawell and Horsham are listed as postcodes in TRUenergy's franchise area licence prior to 2001, then TRUenergy

has an obligation under clause 7 of its gas retail licence to sell gas to customers in these areas.¹⁶

Mildura

Mildura, in the north east of Victoria, is supplied with gas from the non-PTS pipeline between South Australia and Mildura (see Box A.2).¹⁷ Envestra owns both the pipelines (Angaston to Mildura) to and the distribution network in Mildura.

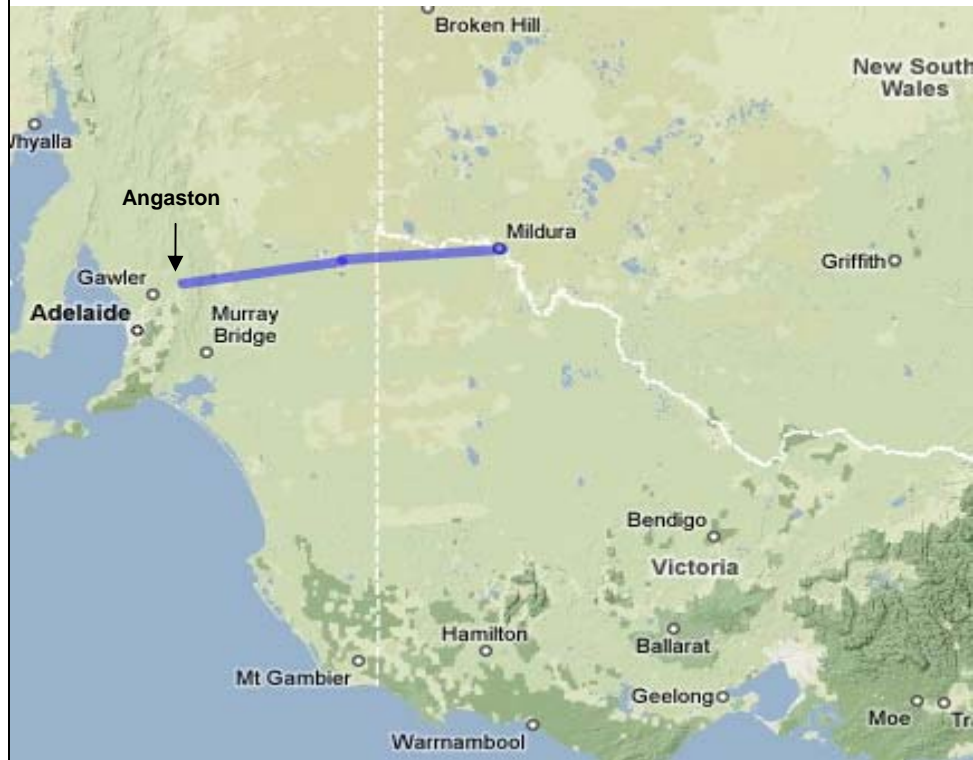
Origin, which has an obligation under clause 7 of its gas retail licence to sell gas in Mildura, is the only gas retailer in this area.¹⁸

¹⁶ Clause 7.5 of TRUenergy's gas retail licence states that clause 7 applies subject to section 42 of the GI Act. As mentioned in footnote 2, an Order in Council made on 29 October 2002 under section 42(5) of the GI Act (Victorian Government Gazette No. S 197) specified small customers in relation to the local retailers' franchise areas as they were defined in their licences prior to 1 October 2002.

¹⁷ Gas is transported to Mildura from the Moomba to Adelaide Pipeline via the Angaston to Berri Pipeline and the Berri to Mildura Pipeline.

¹⁸ Clause 7.5 of Origin Energy's gas retail licence states that clause 7 applies subject to section 42 of the GI Act. As mentioned in footnote 2, an Order in Council made on 29 October 2002 under section 42(5) of the GI Act (Victorian Government Gazette No. S 197) specified small customers in relation to the local retailers' franchise areas as they were defined in their licences prior to 1 October 2002.

Box A.2 **Mildura pipeline**



Source: Google Maps

South Gippsland

The South Gippsland towns of Lang Lang, Korumburra, Leongatha, Inverloch and Wonthaggi will be supplied with gas from the non-PTS pipeline between the Lang Lang gas plant and Pakenham (see Box A.3). Multinet owns the distribution network that will supply gas to these towns when a retailer enters the market.

Box A.3 South Gippsland



Source: Google Maps

Currently, there is no local retailer with an obligation to sell gas to customers in Korumburra, Leongatha, Inverloch and Wonthaggi.

The Commission notes that, as Lang Lang is listed as a postcode in Origin Energy's franchise area licence prior to 2001, then Origin Energy has an obligation under clause 7 of its gas retail licence to sell gas to customers in this area.¹⁹

Bairnsdale and Paynesville

The non-PTS Eastern Gas Pipeline from Longford to New South Wales, which is owned by Jemena, supplies gas to Bairnsdale and Paynesville in eastern Victoria (see Box A.4). Envestra is the distributor in Bairnsdale and Paynesville.

Origin Energy is the only retailer selling gas to these towns, even though it is not obliged to do so under its gas retail licence.

¹⁹ See footnote 8.

Box A.4 **Bairnsdale and Paynesville**



Source: Google Maps