



GAS RETAIL LICENCE

ERM Power Retail Pty Ltd
ABN 87 126 175 460

Issued on
13 February 2013

TRIM – C/13/3231
GR01/2013

GAS RETAIL LICENCE

This Licence is issued pursuant to section 26 of the *Gas Industry Act 2001* (Vic) and is subject to the terms set out in this Licence.

Date

This Licence is issued on 13 February 2013.

Licensee

This Licence is issued to:

ERM Power Retail Pty Ltd (ABN 87 126 175 460) (the Licensee)

Level 5, Riverside Centre
123 Eagle Street,
Brisbane,
QLD 4000.

**THE COMMON SEAL of the
ESSENTIAL SERVICES COMMISSION**
was affixed pursuant to the authority
of the Commission

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Dr Ron Ben-David

CHAIRPERSON

CONTENTS

1.	Definitions	1
2.	Notices	4
3.	Grant of the Licence	5
4.	Status of the requirements in this Part	5
5.	Payment of fees	5
6.	On going technical capacity	6
7.	Compliance with regulatory instruments	6
8.	Gas purchase arrangements	7
9.	Information to customers	7
10.	Hot water metering	8
11.	Separate accounts	9
12.	Payment methods	9
13.	Retailer of last resort	9
14.	Provision of information to AEMO and Commission	10
15.	Audit	11
16.	Dispute resolution	11
17.	Compliance with laws	11
18.	Revocation	11
19.	Variation	13
20.	Transfer	13
21.	Administrator	13

Part A - Interpretation

1. Definitions

- 1.1. Unless the contrary intention appears, a term has the meaning shown opposite it :

Act	the <i>Gas Industry Act 2001</i> (Vic)
administrator	means an administrator appointed by the Commission under section 34 of the Act in respect of the Licensee's retail business
AEMO	Australian Energy Market Operator Limited, ACN 072 010 327
AER	The Australian Energy Regulator
Business Day	a day other than a Saturday, Sunday or a public holiday in Melbourne, Victoria
Commission	the Essential Services Commission established under the ESC Act
customer	a person who may buy gas from a retailer and includes another retailer
deemed contract	a contract for the supply or sale of gas deemed by the Act to have been entered into or to otherwise be in place between a retailer and customer
distribute	The same meaning as in section 3 of the Act
distribution licence	a licence to distribute or supply gas granted under the Act
distribution services	the transportation and delivery of gas through a distribution system and any other services which a distributor includes in its network tariff
distribution system	the meaning given to 'gas distribution system' in section 3 of the Act
distributor	a person who holds, or is exempt from holding, a distribution licence
domestic customer	a customer who purchases energy principally for personal, household or domestic use at the relevant supply address
domestic or small business customer	the meaning given in the Act
Energy Retail Code	means the code setting out terms and conditions relevant to contracts for the supply or sale of gas determined by the Commission under the Act

Enforcement Order	a provisional enforcement order or a final enforcement order made and served by the Commission under section 53 of the ESC Act
ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
Final Enforcement Order	a final order made and served by the Commission under section 53 of the ESC Act
Gas Distribution System Code	The code of that name certified by the Commission
guideline	a guideline published by the Commission
hot water metering installation	a metering installation and associated equipment at a supply point which measures and records the flows of gas and hot water, consisting at a minimum of a gas metering installation, two or more hot water meters and a master cold water meter
large customer	in relation to the supply of gas from a supply point, a person whose aggregate consumption of gas taken from a supply point has been or, in the case of a new supply point, is likely to be, 1000 gigajoules or more in any year commencing on or after 1 September 2000
last resort event	in respect of a retailer, means: <ul style="list-style-type: none"> (a) the retailer's retail licence is suspended or revoked; or (b) the right of the retailer to acquire gas from the wholesale gas market is suspended or terminated, whichever occurs first.
licensee	ERM Power Retail Pty Ltd (ABN 87 126 175 460)
meter	has the meaning given in the Energy Retail Code
Minister	the person who is, from time to time, the Minister for the purposes of the relevant section of the Act
MIRN	the unique identifier for a gas metering installation allocated and registered under the Retail Market Procedures within the meaning of the National Gas (Victoria) Law
National Gas Rules	has the same meaning as in the Energy Retail Code
objectives	the objectives of the Commission under the Act and the ESC Act
Order	an Order in Council made or in force under the Act

other retailer	in respect of a customer and a last resort event, means the retailer that, immediately prior to the occurrence of the last resort event in respect of the retailer, sold gas to the customer
provisional enforcement order	a provisional order made and served by the Commission under section 53 of the ESC Act
relevant customer	in relation to gas from a supply point, has the same meaning as in any relevant Order
retail business	the business that a retailer carries on under its retail licence or exemption granted under the Act
retail gas market rules	Rules governing the retail gas market as defined in the National Gas (Victoria) Law
retail licence	a licence, granted under the Act, authorising the holder thereof to sell gas
retailer	a person who holds or is exempt from holding a retail licence
supply point	a point on a distribution system at which gas is withdrawn from the distribution system for delivery to a customer which is normally located at: <ul style="list-style-type: none"> (a) the inlet of a natural gas installation of a customer; or (b) the outlet of a meter; or (c) the end of a main
undertaking	an undertaking given by the Licensee under section 53(5)(a) of the ESC Act
wholesale gas market	means the market for wholesale trading in gas operated by AEMO under the National Gas Rules
writing	any mode of representing or reproducing words, figures, drawings or symbols in a visible form

1.2. In this Licence, unless the context otherwise requires:

- a. headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
- b. words importing the singular include the plural and vice versa;
- c. words importing a gender include any gender;
- d. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;

- e. a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
- f. a reference to any statute including the Act and regulation, proclamation, Order in Council, ordinance, code, guideline, procedure or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances, codes, guidelines, procedures or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ordinances, by-laws and determinations issued under that statute;
- g. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- h. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- i. other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- j. a period of time:
 - 1. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - 2. which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- k. an event which is required under this Licence to occur on or by a stipulated day which is not a business day may occur on or by the next business day.

2. Notices

- 2.1. A notice under this Licence is only effective if it is in writing, and dealt with as follows:
 - a. if given by the Licensee to the Commission – addressed to the Chairperson at the address specified below or as otherwise notified by the Commission

Essential Services Commission,
Level 2, 35 Spring Street,
Melbourne VIC 3000; or
 - b. if given by the Commission to the Licensee – given by Chairperson and addressed (and marked for attention of) the Chief Executive Officer at the address specified below or as otherwise notified by the Licensee:

ERM Power Retail Pty Ltd,
Level 5, Riverside Centre,
123 Eagle Street
Brisbane, QLD 4000.

A notice is to be:

- c. signed by or on behalf of the person giving the notice and delivered by hand; or
- d. signed by or on behalf of the person giving the notice and sent by pre-paid post; or
- e. transmitted electronically by or on behalf of the person giving the notice by electronic mail or facsimile transmission.

2.2. A notice is deemed to be effected:

- a. if delivered by hand – upon delivery to the relevant address;
- b. if sent by post – upon delivery to the relevant address;
- c. if transmitted electronically – in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic).

2.3. A notice received after 5.00 pm, or on a day that is not a business day, is deemed to be effected on the next business day.

Part B - Licence

3. Grant of the Licence

- 3.1. In exercise of its powers under section 26 of the Act, the Commission grants the Licensee a licence to sell gas to large customers on the terms and conditions set out in this Licence.
- 3.2. This Licence does not permit the Licensee to sell gas to domestic customers.
- 3.3. This Licence is subject to any prohibition set out in any Order issued and in force under the Act.

Part C - Conditions of the Licence

4. Status of the requirements in this Part

- 4.1. A breach of any of the requirements set out in this Part C:
 - a. is a breach of a condition for the purposes of Part 7 of the ESC Act; and
 - b. is a breach of a condition for the purposes of clause 18 of this Licence.
- 4.2. The Licensee acknowledges that any condition deemed by the Act to be included in a licence to sell gas forms part of this Licence and that a breach of any such condition constitutes a breach of a condition for the purposes of clause 18 of this Licence.

5. Payment of fees

- 5.1. The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 30 of the Act.

6. On going technical capacity

- 6.1. The Licensee must at all times maintain:
- a. such technical capacity as is:
 - 1. required to meet its obligations under this licence; and
 - 2. reasonably required to undertake the activities authorised by this licence; and
 - b. such additional technical capacity as is reasonably required to enable it to meet and utilise technological advances in the gas industry.
- 6.2. In this clause 6 activities undertaken pursuant to this Licence includes any activities of that type undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence.
- 6.3. The Licensee must ensure that any contract entered into with any third parties contains such provisions as are necessary to enable the Licensee to comply with the requirements of this clause 6.

7. Compliance with regulatory instruments

- 7.1. Subject to clause 7.2, the Licensee must comply with:
- a. the Gas Distribution System Code;
 - b. the Gas Safety Act 1997;
 - c. any Order;
 - d. any retail gas market rules; and
 - e. any other code, procedure or guideline issued by the Commission from time to time that is expressed as being one with which the Licensee must comply,
- to the extent they are applicable to activities undertaken by the Licensee pursuant to this Licence.
- 7.2. The Commission may, from time to time, by written notice grant an exemption in relation to or otherwise modify the application of some of the requirements of the instruments referred to in clause 7.1.
- 7.3. The Licensee must have in place a system for monitoring its compliance with this Licence and the instruments referred to in clause 7.1.
- 7.4. The Licensee must notify the Commission of any breach by it of the conditions of this Licence, including breach of any of the instruments referred to in clause 7.1, as soon as reasonably practicable after it becomes aware of the breach.

8. Gas purchase arrangements

- 8.1. The Licensee must have in place agreements or arrangements for the purchase of gas through the wholesale gas market or otherwise and any necessary authorisations as are required to enable the Licensee to perform its obligations under any contracts for the sale of gas to which it is a party.
- 8.2. The Licensee is deemed to comply with clause 8.1 if it is registered with AEMO as a 'Customer' in accordance with the National Gas Rules.

9. Information to customers

- 9.1. The Licensee must include at least the following information in a bill issued to the customer for the supply or sale of gas:
 - a. the Metering Installation Reference Number (MIRN) (including the MIRN checksum) assigned to the customer's metering installation or, if there is no assigned MIRN, the meter number or another unique identifying mark assigned to the customer's metering installation;
 - b. the relevant tariff or tariffs applicable to the customer; and
 - c. if the Licensee directly passes through network charges to the customer, the separate amount of the network charge.
- 9.2. If a variation is made to a customer's tariff or to terms or conditions of a customer's contract, unless prior notice of the variation has been provided to a customer, the Licensee must provide such notice to the customer in the form of a statement setting out details of the variation as soon as practicable and in any event no later than the customer's next bill.
- 9.3. Unless clause 13 applies, the Licensee must give notice to a customer who is a party to a deemed contract with the Licensee on, or as soon as practicable after, becoming aware of the deemed contract. This notice must:
 - a. inform the customer that there is deemed to be a contract between the customer and the Licensee for the supply and sale of gas;
 - b. set out the tariff and summarise other terms and conditions under the deemed contract;
 - c. describe the methods by which the deemed contract may be terminated and related terms and conditions; and
 - d. outline the options available to the customer.
- 9.4. Where the Act or this licence requires or has required the Licensee to publish the Licensee's tariffs in the Government Gazette, the Licensee must also publish on the same day in a newspaper circulating generally in Victoria:
 - a. the tariffs; and
 - b. a statement that the Licensee's related terms and conditions are available on request and free of charge in English and, if the Licensee has a

significant number of customers from the same non-English speaking background, in those other languages. Such terms and conditions must actually be available in those other languages.

9.5. If the contract between a customer and a retailer is a fixed term contract, prior to the expiry of the fixed term the retailer must notify the customer:

- a. that the contract is due to expire;
- b. when the expiry will occur;
- c. the tariff and terms and conditions that will apply to the customer beyond the expiry of the contract if the customer does not exercise any other option, which the retailer may determine at its discretion; and
- d. what other options are available to the customer.

The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the customer at the commencement of the term).

9.6. Where the Licensee has financial responsibility in the wholesale gas market for a MIRN relating to premises which it knows to be vacant, the Licensee must, if it elects to leave the premises connected, deliver to the premises an information package relating to offers of retail contracts which are available.

10. Hot water metering

- 10.1. The Licensee must, for a customer for whom it is providing services associated with bulk hot water, ensure that each hot water metering installation is provided, replaced, installed, repaired and maintained in accordance with all applicable laws and any applicable guideline.
- 10.2. Without limiting clause 10.1, within 20 business days after receiving a request for the provision, replacement, installation, repair or maintenance of a hot water metering installation which is not functioning in accordance with all applicable laws and any applicable guideline, the Licensee must offer to provide the service requested on terms which are fair and reasonable and which are not inconsistent in the opinion of the Commission with any applicable guideline.
- 10.3. If a customer replaces the Licensee with another retailer as the supplier of bulk hot water services for a multi-unit dwelling, the Licensee must, if it is the owner of the relevant hot water metering installation, on request offer to sell that hot water metering installation to the other retailer on fair and reasonable terms and conditions.
- 10.4. Any question as to the fairness and reasonableness of the terms and conditions of an offer made under clause 10.3 shall be decided by the Commission on the basis of the Commission's opinion on the fairness and reasonableness of the terms and conditions.

11. Separate accounts

- 11.1. If the Licensee holds more than one licence under Part 3 of the Act, the Licensee must prepare separate accounts for each part of its business in respect of which it has been granted a separate licence.

12. Payment methods

- 12.1. The Licensee must not implement a pre-payment meter scheme without the prior approval of the Commission.
- 12.2. The Licensee must notify the Commission at least 20 business days prior to the termination of an arrangement with any agency or payment outlet through which customers of the Licensee may pay bills.

13. Retailer of last resort

- 13.1. On or before a date to be nominated by the Commission in a communication given to the Licensee, the Licensee must submit to the Commission proposed tariffs, terms and conditions upon which the Licensee would sell gas in accordance with the requirement under clause 13.2.
- 13.2. Subject to clause 13.3, the Licensee must sell gas to a customer at tariffs and on terms and conditions approved or determined by the Commission under Division 6 of Part 3 of the Act.
- 13.3. In approving proposed terms and conditions under clause 13.2 the Commission may approve terms and conditions which do not deal with the subject matter of all of the provisions of the Energy Retail Code.
- 13.4. The requirement under clause 13.2:
- a. applies only if the Licensee is so directed by the Commission in a notice given to the Licensee;
 - b. imposes an obligation on the Licensee to sell gas to a customer which:
 1. commences when a last resort event occurs in respect of the customer's other retailer; and
 2. ends:
 - (a) after three months;
 - (b) when the customer advises the Licensee in writing that the sale is no longer required;
 - (c) when the customer transfers to another retailer; or
 - (d) when the customer enters into a new contract for the sale of gas with the Licensee,
- whichever occurs first.

- 13.5. As soon as practicable after being notified by the Commission or otherwise becoming aware of its obligation to a customer under clause 13.2, the Licensee must give the customer notice in writing:
- a. that a last resort event has occurred in respect of the other retailer;
 - b. that, as a result, the Licensee and the customer are deemed to have entered into a contract for the sale of gas under section 51E(5) of the Act;
 - c. of the date the deemed contract commenced;
 - d. of the tariff and the terms and conditions of the deemed contract;
 - e. that the customer's meter has been or will be read, or an estimate will be made, as at the date the deemed contract commenced so that it can be established what amount of gas has been sold to the customer by the other retailer prior to the occurrence of the last resort event and what amount of gas has been and will be sold to the customer by the Licensee after the occurrence of the last resort event;
 - f. of that meter reading or estimated meter reading. Notice of the meter reading or estimated meter reading may be given after notice of the other matters contemplated by this clause 13.5 is required to be given;
 - g. whether any debt owed by the customer to the other retailer or by the other retailer to the customer, as the case may be, will continue to be so owed and, if it will not, to whom and by whom it will be owed;
 - h. of alternatives available for the customer to arrange a transfer to another retailer or to obtain any different tariff, or different terms and conditions, from the Licensee including that the customer may advise the Licensee in writing that the sale of gas by the Licensee is no longer required; and
 - i. of how and where to obtain further information.

14. Provision of information to AEMO and Commission

- 14.1. The Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 14.2. The Licensee must as soon as reasonably practicable provide AEMO with such information relating to any activities undertaken pursuant to this Licence as AEMO may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by AEMO.
- 14.3. The Licensee must, as soon as reasonably practicable, provide the Commission with such information relating to any activities undertaken pursuant to this Licence as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act and in a manner and form specified by the Commission.

14.4. The Licensee must, as soon as reasonably practicable, provide the Commission with information on its ongoing technical capacity to undertake the activities authorised by this Licence as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act and in a manner and form specified by the Commission.

14.5. In this clause 14:

- a. activities undertaken pursuant to this Licence includes any activities of that type undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence; and
- b. information includes information in the possession, custody or control of any third party.

The Licensee must ensure that any contract entered into with any such third parties contains such provisions as are necessary to enable the Licensee to comply with the requirements of this clause 14.

15. Audit

15.1. Upon request by the Commission, the Licensee must appoint an auditor to be approved by the Commission to conduct audits of:

- a. the Licensee's compliance with its obligations under the Act or this Licence, including but not limited to the codes and guidelines referred to in clause 7.1;
- b. the reliability and quality of information reported by the Licensee to the Commission and the consistency of that information with the Commission's specifications; and
- c. any other matter as directed by the Commission.

15.2. The Licensee must ensure that the Commission is promptly provided with a copy of any reports produced by the auditor pursuant to this clause. The Licensee must comply, and must require the auditor to comply, with any guidelines issued by the Commission dealing with audits under this clause.

16. Dispute resolution

16.1. The Licensee must enter into a customer dispute resolution scheme approved by the Commission under section 36 of the Act.

17. Compliance with laws

17.1. The Licensee must comply with all applicable laws.

18. Revocation

18.1. The Commission may revoke this Licence:

- a. at any time at the request of or with the consent of the Licensee; or

- b. in accordance with the Act.

18.2. The Commission may revoke this Licence if:

- a. the Licensee fails to comply with an undertaking or a final enforcement order;
- b. the Licensee breaches any condition of this Licence, including any condition deemed to apply by the Act or any other legislation;
- c. any information provided by the Licensee pursuant to this Licence or in its application for the Licence is found to be false or misleading;
- d. the Licensee's financial viability or technical capacity is such that the Commission considers that the Licensee would be unable to satisfactorily meet its obligations under this Licence or to its large customers; or
- e. the Licensee fails to comply with a decision, direction, determination or arrangement (as the case may be) made by or agreed with the Commission, AEMO or the Minister;
- f. one of the following events happens:
 - 1. a petition or other application being presented or resolution being passed for the winding up, liquidation or dissolution of the Licensee or notice of intention to propose such a resolution being given or the entry of the Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;
 - 2. the appointment of an administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensee's property;
 - 3. the Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;
- g. it is in the public interest to do so.

18.3. Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensee, specifying:

- a. the basis upon which the Commission is revoking this Licence; and
- b. the date upon which the revocation will take effect, such date to be:
 - 1. in the case of a breach of clause 8, where clause 18.2.a applies or where in the Commission's opinion it is appropriate that the Licence be revoked in a shorter time frame having regard to its objectives and the events or circumstances that gave rise to the notice being issued, no less than 5 business days after the date upon which the notice is issued; and

2. in all other cases, no less than 20 business days after the date upon which the notice is issued,

and, subject to clause 18.4, this Licence will be revoked on the date specified in the notice.

- 18.4. The Commission may, at its discretion and by written notice to the Licensee, withdraw a notice issued under clause 18.3 at any time prior to the revocation date specified in the notice if the Commission is satisfied that the Licensee has complied with the relevant enforcement order or undertaking, rectified the breach or complied with the relevant decision, direction, determination or arrangement (as the case may be) or if the Commission considers that it is otherwise appropriate to withdraw the notice.

19. Variation

- 19.1. For the purposes of section 38 of the Act, the Commission may vary this Licence in accordance with the procedures set out in this clause 19.
- 19.2. Where the Commission:
 - a. wishes to amend the list of instruments referred to in clause 7.1; or
 - b. is of the opinion that a proposed variation to the Licence is consistent with its objectives and is:
 1. of an administrative or trivial nature; or
 2. required urgently, such that it would not be appropriate to issue a notice under section 29(1)(c) of the Act,

the Commission may issue a notice to the Licensee varying this licence accordingly.
- 19.3. A notice issued under clause 19.2 will include:
 - a. the terms of the variation;
 - b. the purpose of the variation;
 - c. where clause 19.2.b applies, confirmation that the Commission is of that opinion; and
 - d. the date upon which the variation will take effect.

20. Transfer

This licence may be transferred in accordance with section 40 of the Act.

21. Administrator

- 21.1. Subject to clause 18, if an administrator is appointed to the Licensee's business under section 41 of the Act, the administrator must exercise its functions and powers in such a manner as may be specified by the Commission in the instrument of appointment.

21.2. The Licensee is responsible for the acts and defaults of the administrator.