



GAS RETAIL LICENCE

RED ENERGY PTY LIMITED
ABN 60 107 479 372

As varied on
14 March 2007

ESC Licence: GR – 01/2006 [Red]
Licences/Gas/Retail/Red Energy March 2007 – TRIM: C/07/2097

GAS RETAIL LICENCE

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

Date

This Licence is issued on 15 November 2006.

Licensee

This Licence is issued to:

RED ENERGY PTY LIMITED, ABN 60 107 479 372, (the Licensee)

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



.....
Greg Wilson
Chairperson



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Part A - Interpretation

1. Definitions

- 1.1. Unless the contrary intention appears a term in **bold** type below has the meaning shown opposite it:

Act	the <i>Gas Industry Act 2001</i> (Vic)
administrator	an administrator appointed by the Commissioner under section 41 of the Act in respect of the Licensee's retail business
authorisation	an authorisation, licence, registration, consent, declaration, exemption or waiver
business day	a day other than a Saturday, Sunday or a public holiday appointed under the <i>Public Holidays Act 1993</i>
Commission	the Essential Services Commission under the <i>Essential Services Commission Act 2001</i>
notice	a notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this licence
customer	unless the context otherwise permits or requires, a person who buys or may want to buy gas from the licensee and includes other retailers
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 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 licence to provide services by means of a distribution pipeline under the Act
domestic or small business customer	the meaning given in section 42(8) of the Act
Energy Retail Code	the code of that name setting out terms and conditions relevant to contracts for the supply or sale of gas determined by the Commission under the Act
final enforcement order	a final order issued under section 53 of the ESC Act
explicit informed consent	the meaning given to that term by any applicable guideline

ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
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
last resort event	an event referred to in section 34(5) of the Act
Licensee	Red Energy Pty Limited, ABN 60 107 479 372
Minister	the person who is the Minister for the purposes of the relevant section of the Act
objectives	the objectives specified in section 18 of the Act and section 8 of the <i>Essential Services Commission Act 2001</i>
order	an Order in Council made or in force under the Act or the <i>Essential Services Commission Act 2001</i>
other retailer	in respect of a customer and a last resort event, the retailer who, immediately prior to the occurrence of the last resort event in respect of the retailer, sold gas to the customer
relevant customer	in relation to a supply of gas from a supply point, has the same meaning as in any relevant order
retail business	the business in respect of which this Licence is issued
retail gas market rules	the relevant retail gas market rules (as defined in Division 2 of Part 4 of the Act) applicable to supply points in respect of which the Licensee sells gas
retailer	a person who engages in the sale of gas by retail and holds, or is exempt from holding, a licence under the Act
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: (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 <i>Essential Services Commission Act 2001</i>
VENCorp	the Victorian Energy Networks Corporation established under Part 8 of the Act

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 or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances 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:
 - A. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - B. 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;
- l. where any matter or provision is required to be "reasonable", the Commission will, if required, in its discretion decide what is or is not reasonable based solely on the Commission's opinion of the matter.

2. Notices

2.1. A notice must be in writing and:

- a. if given by the Licensee to the Commission - addressed to the Chief Executive Officer at the address specified below or as otherwise notified by the Commission:

2 /35 Spring Street MELBOURNE VIC 3000; or

- b. if given by the Commission to the Licensee – given by Chief Executive Officer and addressed to (and marked for attention of) the Chief Executive Officer at the address specified below or as otherwise notified by the Licensee:

Red Energy Pty Limited 2 William Street RICHMOND EAST 3121.

2.2. A notice is to be regarded as having been given by the sender and received by the addressee:

- a. when delivered in person to the addressee;
- b. 3 business days after the date of posting, if the notice is posted within Australia;
- c. 7 business days after the date of posting, if the notice is posted outside Australia;
- d. when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
- e. when it is an electronic notice, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

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

Part B - Licence

3. Grant of Licence

3.1. Subject to the conditions set out in this Licence, the Licensee is licensed to sell gas by retail.

4. Term

4.1. This licence commenced on 15 November 2006.

Part C - Conditions of the Licence

5. Status of the requirements of this Part

5.1. 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.

5.2. The Licensee acknowledges that any condition deemed by the Act to be included in a licence to sell gas by retail forms part of this licence and that a breach of any such condition constitutes a breach of a condition of this Licence for the purposes of Part 7 of the ESC Act and clause 18 of this Licence.

6. Obligation to purchase gas

6.1. The Licensee must use reasonable endeavours to purchase, or obtain a supply of, gas on and subject to commercial terms and conditions, to meet its customers' requirements for gas.

7. Reliability of supply

7.1. The Licensee must comply with any standard relating to the reliability of supply of gas which is determined by the Commission. If any standard is so determined, the Licensee must, whenever required by the Commission, demonstrate its actual and prospective compliance with such standard.

7.2. The Licensee must notify any relevant distributor (and VENCORP as required) of the Licensee's contractual arrangements with the Licensee's customers relating to interruption or curtailment of supply within 21 business days of entering into such arrangements.

7.3. If the Licensee is notified by a distributor of any interruption or curtailment of delivery of gas at a distribution delivery point, the Licensee must use reasonable endeavours to ensure that its customers comply with any reasonable requirement set out in the notice.

8. Contracts with customers

8.1. The Licensee must not enter into a contract for the sale of gas with a relevant customer unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the Energy Retail Code. If a term or condition of the Energy Retail Code is incorporated by reference into the contract, it is taken to be expressly dealt with.

8.2. The Licensee must not enter into any contract for the sale of gas with any domestic or small business customer at a tariff which is different from a tariff offered by the Licensee in accordance with its obligation under clause 8.1 unless the terms and conditions of the contract are materially different from the terms and conditions offered with that tariff.

8.3. Subject to the Energy Retail Code and for the purposes of section 43 (1) (b) of the Act, each term or condition of the Energy Retail Code is a term or condition with

which a contract for the sale of gas to a relevant customer must not be inconsistent.

- 8.4. The Licensee must comply with the terms and conditions of any contract for the sale of gas with a relevant customer.
- 8.5. Clause 24.4 of the Energy Retail Code sets out an event on the happening of which a deemed contract under section 46 (5) (b) of the Act comes to an end.
- 8.6. The proper law of any contract must be the law of the State of Victoria.
- 8.7. The 'relevant order' for the purposes of defining 'relevant customer' in this clause is an Order issued under section 43(3) of the Act.

9. Obligation to offer to sell

- 9.1. The Licensee must offer to supply and sell gas to any domestic or small business customer in relation to the Licensee:
 - a. at tariffs determined by the Licensee and published by the Licensee in the Government Gazette at least 2 months before they take effect; and
 - b. on terms and conditions determined by the Licensee and approved by the Commission and published by the Licensee in the Government Gazette at least 2 months before they take effect.
- 9.2. The obligation of the Licensee under clause 9.1 does not apply to the extent nominated by the Commission in any notice given to the Licensee.
- 9.3. An offer in accordance with clause 9.1 must be made to a domestic or small business customer by the Licensee within ten business days after a request from the customer.
- 9.4. If a domestic or small business customer accepts an offer made by the Licensee in accordance with clause 9.1, the Licensee must comply with the resulting contract.
- 9.5. This clause 9 applies subject to section 42 of the Act and to any order in force under section 21 of the Act.

10. Information to be provided to customers

- 10.1. The Licensee must include at least the following information in a bill issued to a 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.
- 10.2. If a variation is made to the tariff or to terms or conditions of a contract and unless notice of the variation has been previously provided to a customer, the Licensee must include with the customer's next bill, or otherwise as soon as practicable, a statement setting out details of the variation.
- 10.3. Unless clause 14 applies, the Licensee must give notice to a customer who is party to a deemed contract with the Licensee on or as soon as practicable after becoming aware of the deemed contract which:
 - a. informs the customer that there is deemed to be a contract between the customer and the Licensee for the supply and sale of gas;
 - b. sets out the tariff and summarises other terms and conditions under the deemed contract;
 - c. describes the methods by which the deemed contract may be terminated and related terms and conditions; and
 - d. outlines the options available to the customer.
- 10.4. 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 or as soon as practicable 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 other languages as are agreed with the Commission (and the terms and conditions must actually be available in those languages).
- 10.5. The Licensee must comply with any guideline concerning the publication of information about tariffs in retailers' advertisements and other marketing material.
- 10.6. The Licensee must inform the Licensee's customers of the arrangements in place or proposed to be in place to allow them to elect to become a customer of another retailer in accordance with any notice given to the Licensee by the Commission.
- 10.7. 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.
- 10.8. 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).

11. Hot water metering

- 11.1. 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.
- 11.2. Without limiting clause 11.1, 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.
- 11.3. 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.
- 11.4. Any question as to the fairness and reasonableness of the terms and conditions of an offer made under clause 11.3 shall be decided by the Commission on the basis of the Commission's opinion of the fairness and reasonableness of the terms and conditions.

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 establishment or termination of an arrangement with any agency or payment outlet through which customers of the Licensee may pay bills.

13. Community service obligation agreements

- 13.1. If so directed by the Secretary to the Department of Human Services, the Licensee must enter into an agreement with the State for the provision of community services on terms and conditions determined or agreed in accordance with Division 5 of Part 3 of the Act.

14. Retailer of last resort

- 14.1. The Licensee must, if requested by the Commission, on or before a date nominated by the Commission in a written notice to the Licensee, submit to the Commission for approval proposed tariffs, terms and conditions upon which the Licensee would sell gas to relevant customers should a notice be issued by the Commission to the Licensee under section 34(7) of the Act. Where the tariffs, terms and conditions submitted by the Licensee are approved by the Commission, the Licensee must as soon as practicable cause notice of the approved tariffs, terms and conditions to be published in the Government Gazette.
- 14.2. The Licensee must, in accordance with a notice issued by the Commission under section 34(7) of the Act, sell gas to a relevant customer specified in the notice on tariffs and terms and conditions determined in accordance with section 34(8) of the Act.
- 14.3. Despite clause 8.1, the tariffs, terms and conditions referred to in clause 14.2 may not necessarily deal with the subject matter of all of the provisions of the Energy Retail Code.
- 14.4. The requirement under clause 14.2:
- a. applies only if the Licensee is so directed by the Commission in a notice given to the Licensee; and
 - b. commences and ends in accordance with sections 34(5) and (6) of the Act.
- 14.5. As soon as practicable after being notified by the Commission or otherwise becoming aware of its obligation to a relevant customer under clause 14.2, 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 34 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, provided that notice of the meter reading or estimated meter reading may be given after notice of the other matters contemplated by this clause 14.5 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.

- 14.6. The 'relevant order' for the purposes of defining 'relevant customer' in this clause is an Order issued under section 34(15) of the Act.

15. Co-operation with VENCORP

- 15.1. As soon as practicable after any request made by VENCORP, the Licensee must supply such information to VENCORP as VENCORP may reasonably require to perform its functions and exercise its powers under the Act.
- 15.2. A question as to the reasonableness of a requirement by VENCORP for information as contemplated by clause 15.1 shall be decided by the Commission on the basis of the Commission's opinion of the reasonableness of the requirement.

16. On going technical capacity

- 16.1. The Licensee is to maintain technical capacity as detailed in its licence application and such additional technical capacity as required or advised by the Commission to the Licensee.
- 16.2. Notwithstanding the requirement set out in clause 16.1, the Licensee must at all times maintain such additional technical capacity as is reasonably required to undertake the activities that are the subject of this licence in such a manner as to provide an ability to it to meet and utilise technological advances in the gas industry.
- 16.3. The Commission must be advised and provided with copies of any agreement, including any amendment, with any third parties (including any related parties) which enable the Licensee to meet the technical capacity requirements of clause 16.

- 16.4. Upon request by the Commission from time to time, the Licensee must, in a manner and form determined by the Commission, provide to the Commission details of the Licensee's technical and other capacity to continue its operations authorised by this licence.

17. Compliance with orders, codes and guidelines

- 17.1. As well as complying with this licence, the Licensee must comply with all applicable provisions of:
- a. any order;
 - b. any retail gas market rules;
 - c. the Energy Retail Code;
 - d. the Gas Distribution System Code;
 - e. any guideline identified as one with which the Licensee must comply in section 64(a) of the Act, in this licence or in a code referred to in this clause 17.1;
 - f. any scheme or schemes approved by the Commission under sections 62 and 63 of the Act;
 - g. the Code of Conduct for Marketing Retail Energy in Victoria, published by the Commission; and
 - h. any other code or procedure, interim or final, certified by the Commission from time to time if that code or procedure itself requires the Licensee to comply or the Commission has informed the Licensee that compliance is required by way of a notice given to the Licensee by the Commission.
- 17.2. The Licensee must monitor its compliance with this licence and any order, code, or guideline it is required to comply with under clause 17.1.
- 17.3. If the Licensee becomes aware of any breach of this licence or any order, code, guideline, scheme or procedure by the Licensee, the Licensee must notify the Commission of the breach as soon as practicable.

18. Revocation of the Licence

- 18.1. The Commission may revoke this Licence at any time at the request or with the consent of the Licensee.
- 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 (including any arrangement concerning load shedding) (as the case may be) made by or agreed with the Commission, VENCORP or the Minister.

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:
 - A. in the case of a breach 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
 - B. 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, 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. Audits

19.1. Upon request by the Commission the Licensee must appoint an independent auditor to conduct audits of:

- a. its compliance with obligations under this licence, including obligations to comply with codes and guidelines; and
- 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.

- 19.2. The Licensee must comply, and must require the Licensee's auditor to comply, with relevant aspects of any guideline dealing with audits under this clause, including any minimum requirements relating to the appointment of the auditor, the terms and conditions of the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.

20. Dispute resolution

- 20.1. Unless exempted by the Commission, the Licensee must enter into a customer dispute resolution scheme approved by the Commission in accordance with section 36 of the Act.

21. Separate accounts

- 21.1. If the Licensee holds more than one licence under the Act, the Licensee must ensure that separate accounts are prepared for each part of its business in respect of which it has been granted a separate licence.

22. Provision of information to the Commission

- 22.1. The Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 22.2. The Licensee must, as soon as reasonably practicable, provide the Commission, in the manner and form specified by the Commission, such information relating to any activities undertaken pursuant to this Licence as the Commission may from time to time require/properly request in connection with the performance of its functions or the exercise of its powers under the Act or the ESC Act.
- 22.3. The Licensee must, as soon as reasonably practicable, provide the Commission with information of its on going technical capacity to undertake the activities authorised by this Licence, in a manner and form specified by the Commission.
- 22.4. In this clause 22:
- a. activities undertaken pursuant to this Licence includes any activities undertaken by a contractor, subcontractor, agent or other 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 contain such provisions as are necessary to enable the Licensee to comply with the requirements of this clause 22.

23. Payment of licence fees

- 23.1. The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.

24. Administrator

- 24.1. 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.
- 24.2. The Licensee is responsible for the acts and defaults of the administrator.

25. Compliance with laws

- 25.1. The Licensee must comply with all applicable laws (including the Act and *Gas Safety Act 1997* (Vic) and any regulations made under that Act).

26. Variation

- 26.1. This licence may be varied in accordance with section 38 of the Act.

27. Transfer of licence

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

SCHEDULE 1: VARIATIONS

Date	Reason for variation
14 March 2007	To review and revise the form and content of the licence