GAS DISTRIBUTION LICENCE

Enwave Victorian Networks Pty Ltd
(ABN 69 163 231 696)
(the Distributor)

As varied on 5 April 2017

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne 3000
Telephone (03) 9032 1300, Facsimile (03) 9032 1303

ESC Licence: GD01/2016
File Ref: C/17/5512
1. **GRANT OF LICENCE**

The *Commission*, in exercise of the powers conferred by section 26 of the *Gas Industry Act*, hereby issues this licence to the *Distributor* authorising the *Distributor* to provide services by means of *distribution pipelines* in the *distribution area* subject to the conditions set out in this licence.

2. **TERM**

This licence was issued on 19 December 2016 and has been varied on the dates set out in schedule 3.

3. **VARIATION AND REVOCATION**

(a) The *Commission* may vary or revoke this licence in accordance with clause 3(b), 3(c), 3(d) or 11.6(a).

(b) The *Commission* may at any time agree with the *Distributor* that this licence should be varied or revoked.

(c) The *Commission* may vary this licence or licence conditions after:

(i) advising the *Distributor* of the proposed variation;

(ii) giving the *Distributor* an opportunity to make submissions in relation to the proposed variation; and

(iii) considering any such submissions.

(d) The *Commission* may at any time give at least 20 business days notice of revocation to the *Distributor* if:

(i) the *Distributor* does not comply with an *enforcement order* or an *undertaking*; and

(ii) the *Commission* is satisfied that the revocation of this licence is necessary having regard to the *policy objectives*,

in which case the term of this licence ends, subject to clause 3(e), on the expiration of the period of the notice.
(e) The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3(d) if, before the expiration, the Distributor complies with the enforcement order or the undertaking (as the case may be).

4. COMPLIANCE WITH CODES, RULES AND OTHER REQUIREMENTS

(a) The Distributor must comply with:

(i) the Distribution System Code;

(ii) the Retail Code;

(iii) all other codes, standards, rules and guidelines which are specified by the Commission to apply to the Distributor; and

(iv) customer-related standards and procedures;

subject to any derogations from those codes, standards, rules or guidelines or customer-related standards and procedures set out in schedule 1 to this licence.

(b) At the written request of the Commission, the Distributor must participate to the extent specified by the Commission in the development, issue and review of any customer-related standards and procedures specified by the Commission.

(c) If the Commission considers that:

(i) the Distributor has failed to comply with clause 4(b); or

(ii) customer-related standards or procedures developed by the Distributor are insufficient for the purpose for which they were developed,

the Commission may issue customer-related standards and procedures applicable to the Distributor and with which the Distributor must comply.

(d) If the Distributor becomes aware of a material breach of a licence condition, code, standard, rule, guideline or customer-related standard or procedure by the Distributor, the Distributor must notify the Commission of the material breach in accordance with any guidelines issued by the Commission or, in the absence of such guidelines, as soon as practicable.

(e) The Distributor must:
(i) at the request in writing of the Commission; or

(ii) as required by guidelines issued by the Commission,

report to the Commission in connection with its compliance with:

(i) licence conditions;

(ii) applicable codes, standards, rules and guidelines; and

(iii) customer-related standards and procedures.

Note: The licence conditions in clause 4 are made pursuant to section 29(c) of the Gas Industry Act. Pursuant to section 31(1) of the Gas Industry Act, if a licence is subject to a condition of a kind referred to in section 29(c) of the Gas Industry Act, the Commission may:

(a) in accordance with procedures specified by the Commission, amend specified industry codes, standards, rules or guidelines, or a document referred to in any of them, for the purposes of their application under the licence; and

(b) resolve, or seek to resolve, disputes between the Distributor and any other person relating to the specified industry codes, standards, rules or guidelines, or a document referred to in any of them, as they apply under the licence.

5. DEEMED DISTRIBUTION CONTRACTS

(a) The Distributor:

(i) must by a date nominated by the Commission in a written notice given to the Distributor, which is not less than 20 business days after the notice is given to the Distributor; and

(ii) may at any other time,

prepare and submit to the Commission proposed terms and conditions of a deemed distribution contract for approval by the Commission.

(b) As soon as practicable after approval of proposed terms and conditions of a deemed distribution contract by the Commission, the Distributor must give notice of those terms and conditions and publish them in the Government Gazette in accordance with the Gas Industry Act.
6. **PROVISION OF INFORMATION AND MAINTENANCE OF SEPARATE ACCOUNTS**

(a) The Distributor must provide to the Commission, in a manner and form and at a time decided by the Commission and notified to the Distributor, such information as the Commission may from time to time require.

(b) The Distributor must ensure that separate accounts are prepared for its distribution business in accordance with any applicable Commission guidelines published for this purpose.

7. **DISPUTE RESOLUTION**

(a) The Distributor must submit to the Commission for its approval, and if approved implement, a scheme for the fair, reasonable and effective investigation and resolution of disputes between it and:

(i) a customer about the Distributor’s services, billing and charging; and

(ii) aggrieved persons about the manner in which the Distributor conducts its business under its Distribution Licence and applicable codes, standards, rules or guidelines.

(b) Unless it has been notified by the Commission that it need not comply with this clause 7(b), the Distributor must comply with clause 7(a) by submitting to the Commission for its approval an ombudsman scheme and implementing any such scheme that the Commission has approved.

(c) An ombudsman scheme that is implemented by the Distributor to comply with clause 7(b) must contain and comply with terms and conditions that:

(i) bind the Distributor to participate in the scheme and comply with its rules (as amended from time to time) from the date on which it is approved by the Commission,

(ii) provide the Distributor’s customers and aggrieved persons with ready and equal access to the scheme,

(iii) subject to 7(c)(iv), present no cost barriers to customers,

(iv) do not permit fees to be charged to, or costs to be awarded against, residential and small business customers;
(v) provide that the scheme be governed by a board consisting of an independent chairperson and equal numbers of customer representatives appointed by the Commission and representatives appointed by the members of the scheme;

(vi) in accordance with a process approved by the Commission, provide for those members of the scheme and customer representatives that are members of the board to appoint the chairperson after consultation with the Commission;

(vii) provide for the board to appoint the ombudsman;

(viii) require the board to inform the Commission of any proposed amendments of the scheme;

(ix) confer on the ombudsman the power to make rulings with which the Distributor is required to comply;

(x) provide that, if the scheme prevents a ruling of the ombudsman from exceeding in value a maximum amount, that amount must be no less than $20,000 in respect of a complaint from an individual customer;

(xi) confer on the ombudsman the power to impose sanctions on the Distributor for a breach of a ruling;

(xii) require the ombudsman to follow fair and efficient procedures, and make decisions that are fair and reasonable having regard to the law, the licences, industry codes, deemed contracts, and good industry practice;

(xiii) enable the Commission to refer complaints in relation to the conduct of the participating Distributor's business conducted under its Distribution Licence to the ombudsman;

(xiv) require the Distributor to bear a fair proportion of the cost of the development, establishment and operation of the ombudsman scheme;

(xv) enable a question as to the fairness of the proportion of the costs which must be borne by a Distributor to be decided by the Commission on the basis of the Commission's opinion of the fairness of the proportion;

(xvi) require the ombudsman to report to the Commission as and when required by the Commission on the operation of the scheme in relation to the industry of which the Distributor is part;
(xvii) require the ombudsman to publish its decisions and annual reports on the operation of the scheme and the performance of each member of the scheme in relation to the industry of which the Distributor is part;

(xviii) require the board to conduct periodic and comprehensive reviews of the performance of the scheme in consultation with members, customer representatives, the Commission and other interested parties; and

(xix) provide for the Distributor to withdraw from the scheme subject to:

A. the Commission notifying the Distributor that it need not comply with clause 7(b);

B. the Distributor providing to the Commission 12 months notice in writing of the Distributor's intention to withdraw; and

C. the Distributor satisfying the Commission that the Distributor complies with clause 7(a).

8. PAYMENT OF LICENCE FEES

(a) The Distributor must pay as directed by the Commission a licence fee determined in accordance with section 30 of the Gas Industry Act.

(b) If the fee is an annual fee, it must be paid:

(i) in four equal instalments due on the last days of September, December, March and June of each year, or

(ii) in full on or before the last day of September of each year.

(c) The Distributor must pay as directed by the Commission such other fees and charges in respect of this licence as are determined by the Minister in accordance with section 30 of the Gas Industry Act.

9. COMPLIANCE WITH LAWS

The Distributor must comply with all applicable laws.
10. OPERATIONAL AND COMPLIANCE AUDITS

(a) As requested by the Commission, the Distributor must undertake operational and compliance audits of:

(i) its compliance with obligations under this licence, the Distribution System Code and the Retail Code; and

(ii) its compliance with policies, practices, procedures and systems for collection, analysis and reporting of data on the performance and the capacity of the gas distribution system.

(b) The operational and compliance audits must be conducted by an independent expert or audit team nominated by the Distributor and approved by the Commission.

(c) The scope of the operational and compliance audits are to be approved by the Commission and must meet any minimum audit scope required by the Commission, but need not cover obligations, policies, practices, procedures or systems of the Distributor where compliance is audited under a separate regulatory requirement.

(d) The Distributor must provide the results of the audit to the Commission in accordance with any guidelines published by the Commission.

(e) The terms and conditions of the operational and compliance audit contract which relate to the scope of the audits must be approved by the Commission.

11. THIRD PARTY ACCESS TO CNG INFRASTRUCTURE

11.1 Obligation to Negotiate in Good Faith

(a) Where any person seeks access to any infrastructure that is owned or operated by the Distributor, the Distributor must:

(i) negotiate in good faith where the access sought by the person can be provided in a safe manner; and

(ii) use its best endeavours to reach agreement on terms that are fair and reasonable having regard to the long term interests of consumers.

(b) The Distributor must not engage in any conduct for the purpose of preventing or hindering any person from seeking and/or obtaining safe access to any infrastructure that is owned or operated by the Distributor.
11.2 Provision of information to the Commission

(a) The Commission may request the Distributor to provide it with information in relation to the operation of its CNG Infrastructure.

(b) Any requests for information by the Commission may include information concerning:

(i) the capacity of the gas reticulation network in a location including the contracted capacity;

(ii) the capacity of the gas reticulation network in a location that is currently available or may be available in the future;

(iii) the number of requests for access to the CNG Infrastructure received by the Distributor within a prescribed period of time and the status of those requests;

(iv) details of any agreements entered into by the Distributor and any third party (including a related body corporate) under which the Distributor provides access to its CNG Infrastructure;

(v) any proposals by the Distributor to carry out an extension/expansion to the CNG Infrastructure;

(vi) the operation and maintenance of the CNG Infrastructure (including costs incurred or to be incurred by the Distributor).

11.3 Compliance with Conditions by Related Body Corporate

(a) Any obligation or requirement imposed on the Distributor under this licence shall extend to any related body corporate of the Distributor.

(b) To the extent necessary, the Distributor shall procure the compliance of all its related bodies corporate with the conditions of this licence.

(c) If the CNG Infrastructure ceases to be owned, operated or controlled by a related body corporate of the Distributor, the Distributor must, and must procure that its related body corporate (as applicable) procures the third party to execute a deed of covenant (in a form and on terms acceptable to the Commission) under which that person agrees to be bound by the conditions of this licence.

11.4 Non-compliance with Licence Conditions

In addition to any rights or remedies which may be available under the Gas Industry Act 2001 (Vic) or the Essential Services Commission Act 2001 (Vic), if the Distributor does not comply with clauses 11.1, 11.2, or 11.3 of this licence, then:
(a) The Commission may issue the Distributor with a Notice of Non-Compliance setting out the nature of the Distributor’s non-compliance.

(b) Upon receiving a Notice of Non-Compliance, the Distributor will have 10 business days (unless otherwise agreed) in which to satisfactorily remedy the non-compliance. Prior to carrying out any steps to remedy its non-compliance, the Distributor must advise the Commission on what steps it proposes to take to remedy its non-compliance.

(c) If the Commission does not object to the Distributor’s proposed course of action to remedy its non-compliance, the Distributor must expeditiously carry out its proposed steps to remedy its non-compliance.

(d) If, after the expiration of 10 business days (or the period otherwise agreed) from the issue of the Notice of Non-Compliance, the non-compliance has not been remedied and no other arrangement for its remedy has been agreed to by the Distributor and the Commission, the Commission may request the Distributor to prepare and submit to it an undertaking, in terms that are satisfactory to the Commission.

(e) If requested by the Commission, the Distributor must, within 10 business days (unless otherwise agreed) of the Commission’s request, prepare and submit an undertaking in respect of the relevant CNG infrastructure and submit it to the Commission.

(f) If the Distributor fails to submit an undertaking to the Commission within 10 business days (or the period otherwise agreed) of the Commission’s request, the Commission in accordance with Condition 11.6(a) may vary these licence conditions by including additional conditions to address the non-compliance specified in the Notice of Non-Compliance.

11.5 Obligation to notify Commission

If the Distributor becomes aware that any CNG Infrastructure will cease to be owned, operated or controlled by a related body corporate of the Distributor, the Distributor must notify the Commission of such information.

11.6 Variation of Licence

(a) The Commission may, in its absolute discretion (and without following any procedure set out in condition 3 of this licence), vary the conditions of this licence by a notice to the Distributor if:

(i) any CNG Infrastructure ceases to be owned, operated or controlled by a related body corporate of the Distributor; or

(ii) condition 11.4(f) applies.
(b) Condition 11.6(a) does not limit the circumstances in which the Commission may vary the conditions of this licence.

12. EXEMPTION FROM REQUIREMENT TO REGISTER WITH AEMO

(a) In respect of the activities conducted under this licence, the Distributor is exempt from the requirement to register with AEMO and to comply with the RMPs. This exemption does not apply if:

(i) any of the pipelines in Victoria used by the Distributor to provide gas distribution services become 'covered' under the National Gas Law; or

(ii) any of the pipelines used by the Distributor to provide gas distribution services become part of the Victorian 'declared distribution system' under the National Gas (Victoria) Act 2008 (Vic).

(b) If the Distributor is not obliged to comply with the RMPs, the Distributor must publish on its website, and comply with, a Customer Transfer and Reconciliation Code (CTR Code) as approved by the Commission. The CTR Code may be amended by the Commission at its discretion.

13. DEFINITIONS AND INTERPRETATION

13.1 Definitions

In this licence, unless the contrary intention appears:

"Access Arrangement" has the meaning in the Distribution System Code;

"AEMO" means the Australian Energy Market Operator Ltd;

"business day" means a day on which banks are open for general banking business in Melbourne, excluding a Saturday or Sunday;

"CNG Infrastructure" includes the CNG Infrastructure and Reticulation Infrastructure as defined in the Development Agreement entered on 22 September 2014 by the State of Victoria, Brookfield Regional Networks Pty Limited, Brookfield Regional Energy Pty Limited, and Tas Gas Retail Pty Ltd.

"Commission" means the Essential Services Commission established under the Essential Services Commission Act 2001 (Vic);

"CTR Code" means Customer Transfer and Reconciliation Code;
"customer" means a person to whom gas is conveyed through a distribution pipeline;

"customer-related standards and procedures" includes:

(a) overall performance standards;

(b) complaint handling, escalation and resolution policies, practices and procedures;

(c) security deposit, disconnection and credit policies, practices and procedures; and

(d) rules and procedures for compensating customers for the Distributor's failure to comply with any such standards, policies, practices and procedures, which are issued by the Distributor under clause 4(b) or by the Commission under clause 4(c);

"deemed distribution contract" means a contract deemed to be entered into between the Distributor and a retail customer pursuant to section 48 (6) of the Gas Industry Act 2001 (Vic);

"distribute", has the meaning ascribed to that term in the Gas Industry Act 2001 (Vic);

"Distributor" means Enwave Victorian Networks Pty Ltd (ABN 69 163 231 696);

"distribution area" means the area described in schedule 2; "distribution pipeline" has the meaning ascribed to that term in the Gas Industry Act 2001 (Vic);

"Distribution System Code" means the Distribution System Code issued by the Commission as amended from time to time;

"distribution system" means in relation to a distributor a system of distribution pipelines which a distributor uses to distribute gas for supply to customers;

"enforcement order" means a provisional or final order made and served by the Commission under section 53 of the Essential Services Commission Act 2001 (Vic);

"Gas Industry Act" means the Gas Industry Act 2001 (Vic);

"National Gas Law" means the National Gas Law applying as a law of Victoria under the National Gas (Victoria) Act 2008 (Vic);

"policy objectives" means the objectives specified in section 18 of the Gas Industry Act 2001 (Vic) and section 8 of the Essential Services Commission Act 2001 (Vic);
“Related body corporate” includes a body corporate related to the Distributor as defined in section 9 of the Corporations Act 2001 (Cth);

“Retail Code” means the Energy Retail Code issued by the Commission as amended from time to time;

“RMPs” means AEMO Retail Market Procedures (Victoria);

“supply”, in relation to gas, means the delivery of gas;

“undertaking” means an undertaking given by the Distributor under section 54B of the Essential Services Commission Act 2001 (Vic).

13.2 Interpretation

In this licence, unless the context otherwise requires:

(a) words and phrases in italics have the meaning ascribed to them in clause 13.1;

(b) headings are for convenience only and do not affect the interpretation of this licence;

(c) words importing the singular include the plural and vice versa;

(d) words importing a gender include any gender;

(e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;

(f) a reference to any thing includes a part of that thing;

(g) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this licence;

(h) a reference to any statute, 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;
(i) 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;

(j) a reference to writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form;

(k) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;

(l) a reference to the Commission includes a reference to the Office of the Regulator-General established under the Office of the Regulator-General Act 1994;

(m) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;

(n) a period of time:

(i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day, or

(ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and

(o) 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.

THE COMMON SEAL OF THE ESSENTIAL SERVICES COMMISSION was affixed pursuant to the authority of the Commission on 7 April 2017

Dr Ron Ben-David
Chairperson
SCHEDULE 1: DEROGATIONS
SCHEDULE 2: DISTRIBUTION AREA

Postcodes

3264, 3352, 3463, 3515, 3523, 3549, 3579, 3585, 3638, 3888, 3909
SCHEDULE 3: VARIATIONS

This licence was originally issued on 19 December 2016 and has been varied as follows:

By the Commission 5 April 2017 To amend the Licensee’s name from 'Brookfield Regional Networks (Victoria) Pty Ltd' to 'Enwave Victorian Networks Pty Ltd'.