

## **Background Paper on Draft Codes and Licences**

The Energy Regulator (Regulator) has in anticipation of the appointment by the State of a retailer and a distributor of natural gas, developed certain foundation regulatory instruments with the assistance of the State.

With the State's bid process now underway, the Regulator invites public and bidder submissions on these draft Codes and Licences. Submissions will be placed on the Regulator's website to ensure that as much information as possible is provided to interested parties.

This paper is intended to assist persons making submissions.

Documents may be obtained or enquiries may be made by contacting Daniel Minchin ph.(03) 6233 5608 or through the Energy Regulator's website at:

<http://www.energyregulator.tas.gov.au>

Submissions must be received no later than **c.o.b** Wednesday 16 January 2002 and can be sent as electronic documents, or hand delivered to the following electronic and physical sites:

Email: [office@energyregulator.tas.gov.au](mailto:office@energyregulator.tas.gov.au)

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## **Background to the Tasmanian Natural Gas Project**

Tasmania is currently the only Australian State or Territory without access to a reticulated natural gas supply. In 1997 the State determined to appoint a preferred developer to investigate the feasibility of introducing natural gas to Tasmania on a commercial basis and called for expressions of interest from national and international participants in the natural gas industry. As a result of this process Duke Energy International (Duke Energy) was selected in 1998 as the preferred proponent to commence the Tasmanian Natural Gas Project (TNGP), being the construction of a transmission pipeline from Victoria to Tasmania.

Duke Energy completed its feasibility study in February 1999, which found the TNGP to be technically and economically feasible. In particular Duke Energy's market analysis indicated that there is sufficient potential demand for natural gas in Tasmania to develop a viable natural gas industry.

In April 2001, following more detailed analysis into the TNGP, Duke Energy entered into a Development Agreement with the State to bring natural gas to Tasmania.

Duke Energy<sup>1</sup> has now received initial planning and regulatory approvals including a construction licence from the Energy Regulator, and is poised to commence construction of the 305 km undersea natural gas transmission pipeline between Victoria (Longford) and Tasmania (Bell Bay). It is proposed that the Bell Bay Power Station will be progressively converted to natural gas with the conversion of the first generating unit due to be completed by July 2002.

Duke Energy's intention is to develop onshore natural gas transmission pipelines from Bell Bay to Port Latta and from Rosevale to Bridgewater. It is also proposed that Duke Energy will have a right to connect transmission pipeline laterals to a limited number of major industrial foundation customers. These transmission pipelines will form the backbone of Tasmania's natural gas pipeline network and will connect to the natural gas distribution pipeline system.

## **Background to the Selection of a Distributor in Tasmania**

The State is conducting a gas tender process to select a gas distributor. The successful distributor will be awarded an exclusive five year franchise to construct and operate a natural gas distribution system in Tasmania. As noted above, the distribution system will connect to the transmission system and deliver gas to retail customers. It is expected that customers served from the distribution system will include domestic and small to medium businesses.

The business of a gas distributor (analogous to an electricity distributor) is to provide services related to the transport of gas and its delivery to customers. A distributor does not sell gas by retail to customers.

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<sup>1</sup> In this instance Duke Energy is DEI Tasmania Holdings Pty Ltd.

Further information on the selection of a gas distributor in Tasmania is available at <http://www.energyregulator.tas.gov.au>

## Background to the Selection of a Retailer in Tasmania

The State's gas tender process is also being used to select a gas retailer. While this is not envisioned by the *National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code)*, it has been proposed by the State on the basis of maximising the ease of the process to bidders.

The successful retailer will be awarded an exclusive franchise to retail gas to all but a limited number of large customers to be specified in an order made by the Minister. The timing of this franchise is intended to align with full retail contestability in electricity, expected on 1 July 2008.

While the State proposes to phase out the electricity retail franchise in a series of tranches, the 500 TJ per annum contestability limit for natural gas will continue for the entire six year gas retail franchise, followed by full retail competition.

## Regulator's Role in the Gas Tender Process

The State has elected to follow a tender process consistent with Chapter 3 of the National Gas Code. The National Gas Code sets out the process for determining coverage of pipelines, including the requirements for tender structure and outcomes. In particular, the National Gas Code provides for regulatory approval at key points of the tender process, to ensure that the outcomes of the tender are consistent with the objectives of third party access pricing.

Accordingly, the role of the Regulator's Office in relation to the State's tender process is multi-faceted. The Regulator's Office, among other things, contains both the functions of Local Regulator and Director of Gas. The function of Director of Gas is most important in the context of industry Codes and Licences.<sup>2</sup>

As **Local Regulator** under the Gas Code, the Regulator is responsible for determining that the tender process is being conducted in accordance with the Code. This is a two stage process, commencing with the approval of the Tender Approval Request (TAR), which sets out the proposed tender process in terms of its most likely outcomes and their consistency with the Code. The TAR was approved by the Regulator on 9 November 2001. Copies of the Local Regulator's decision to approve the TAR, and his reasons, are provided at <http://www.energyregulator.tas.gov.au>.

## Legislation in Relation to the Natural Gas Industry

The State has enacted a body of legislation which provides the regulatory framework for the natural gas industry. The principal legislation is:

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<sup>2</sup> There is a further explanation of the various regulatory responsibilities of the Office at Appendix A to this paper. For convenience we have used the term Regulator in this paper except where the distinction is important in the context of the discussion.

### Gas Act 2000

This Act regulates the distribution and retailing of gas in Tasmania. It includes provisions for the appointment of the Director of Gas (the Energy Regulator), the Director of Gas Safety and for the licensing of gas distributors and retailers. It is intended that Gas Regulations will be made under the Gas Act to deal with, amongst other things, applications for distribution and retail licences, the contestability arrangements for the Tasmanian retail gas market and the stipulation of safety requirements governing gas infrastructure and equipment, including safety cases for gas distribution systems. [<http://www.thelaw.tas.gov.au/>].

### Gas Pipelines Act 2000

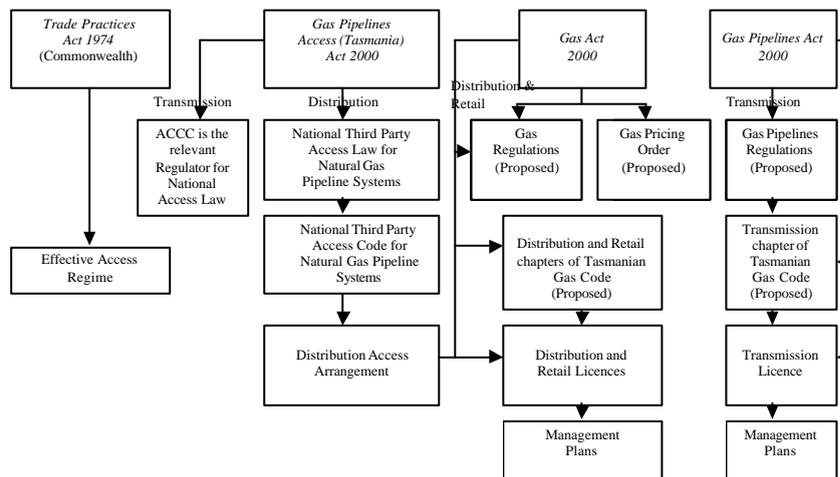
This Act regulates the construction and operation of gas transmission pipeline and associated facilities in Tasmania. It is intended that Gas Pipeline Regulations will be made under the Gas Pipelines Act to deal with, amongst other things, the content of gas safety cases [<http://www.thelaw.tas.gov.au/>].

### Gas Pipelines Access (Tasmania) Act 2000

This Act regulates access to gas pipelines in Tasmania by, amongst other things, adopting the National Access Law, including the National Gas Access Code [<http://www.thelaw.tas.gov.au/>].

## REGULATORY SCHEME FOR GAS SUPPLY INDUSTRY IN TASMANIA

### Access regulation, technical, operational and tariff regulation



## Tasmanian Natural Gas Market - Structure and Conduct

Fundamental to a discussion of industry regulation is the proposed market model and structure of the Tasmanian natural gas industry. Market conduct is inextricably linked to market structure, with licensing one of the primary means of ensuring that market conduct remains in line with the public interest. The State considered issues of market structure in great detail, as a corollary to the design of the gas tender process.

The State's objectives for the tender process are set out in the TAR<sup>3</sup>, as follows:

- to facilitate the development of an efficient and competitive gas supply industry;
- to maximise the coverage of reticulated gas services throughout Tasmania in an economically efficient manner;
- to minimise costs to gas consumers;
- to minimise the ongoing risk for the State and consumers;
- to establish appropriate standards of safety, reliability and quality in the gas supply industry; and
- to establish a regulatory framework that maximises the long-term growth of the gas market in Tasmania while providing sufficient regulatory certainty to attract investment and maintain the financial viability of the gas supply industry.

In order to ensure that industry needs were considered concurrently with consumer needs (through the National Gas Code process), the State conducted market testing of the proposed regulatory structure for the Tasmanian gas industry.<sup>4</sup> The responses to this market testing were incorporated in the market and regulatory model, after the State found that there needed to be exclusive franchises for both distribution and retail to facilitate a greenfields development. Most potential bidders were also seeking a longer period than five years for a distribution price path.<sup>5</sup> The majority of potential bidders were found to express a strong preference for 'stapled' distribution and retail bids.<sup>6</sup>

The Regulator has worked with the State to ensure that information relating to market structure and conduct, such as Codes and Licences, is prepared and offered to bidders in draft form to maximise competition in the process.

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<sup>3</sup> The TAR is available at <http://www.energyregulator.tas.gov.au>

<sup>4</sup> These comments as to the results of market testing are taken from the Tender Approval Request submitted to the Regulator. They summarise the submission of the State and should not be taken to be an expression of the findings or views of the Regulator.

<sup>5</sup> The Natural Gas Pipelines Access Agreement dated 7 November 1997 between the Commonwealth of Australia and each State and territory provides that the maximum period for an exclusive distribution franchise is five years.

<sup>6</sup> Stapled bids require bids from separate legal entities for the distribution and retail franchises but which are not severable for the purposes of the award of the franchises.

The three sectors in the Tasmanian natural gas industry; transmission, distribution and retailing, are discussed below.

## The Proposed Natural Gas Transmission Market

As noted previously, Duke Energy is developing an undersea transmission connection from Victoria to Tasmania, and will construct on-land laterals to the south and north west of the State.

In line with this, Duke Energy and the State signed a Development Agreement in April 2001, whereby it will:

- Construct, operate and maintain a 305 km undersea natural gas transmission pipeline between Victoria (Longford) and Tasmania (Bell Bay); and
- Develop the onshore natural gas transmission pipelines from Bell Bay to Port Latta and from Rosevale to Bridgewater (near Hobart). Duke Energy will also have a non-exclusive right to construct and operate laterals to a limited number of foundation customers.

It is understood that Duke Energy will purchase natural gas under a long term contract for its own use in supplying large industrial customers<sup>7</sup>.

## The Proposed Natural Gas Distribution Market

The business of a gas distributor (analogous to an electricity distributor) is to provide services related to the transport of gas and its delivery to customers. A distributor does not sell gas by retail to customers.

The Tasmanian natural gas distribution system will cover the area proposed by bidders. It is not possible for this to be known prior to the finalisation of the bid process, however the State has proposed a Minimum Pipeline Route (MPR) which bidders must offer to reticulate as part of a Conforming Bid Submission. While bidders may, under the TAR and Tender Guidelines, propose alternative routes, the State has the option to not consider that bid submission. This provides an incentive for bidders to exceed the MPR in their bid submissions.

The MPR includes most areas within the following urban locations:

- Hobart;
- Launceston;
- Devonport;
- Ulverstone ; and
- Burnie.

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<sup>7</sup> It is to be noted that the supply of gas from a transmission pipeline is not the retailing of natural gas for the purposes of the *Gas Act 2000*. This has the effect that subject to Duke Energy being able to supply direct from the proposed transmission pipeline or from an extension to that pipeline, it may be involved directly in the sale and supply of gas to customers.

The distributor will be subject to a Gas Pricing Order (GPO) which will set out pricing for the bidder's Proposed Areas (note that this is expected to exceed the MPR). The State has also expressed a preference for uniform distribution tariffs for customers using up to 30TJ per annum, provided that the resultant Reference Tariffs are able to meet the requirements of the Gas Code. For customers using above 30TJ per annum, the method of revenue control will be broadly cost reflective to the extent that it will be based on a \$/GJ/km<sup>8</sup>, although bidders are free to structure their Reference Tariffs in any manner they deem appropriate, subject to Code requirements. There is no prohibition on a distributor (or a retailer) offering a discount to the tariffs governed by the GPO.

Other features of the proposed GPO are:

- Revenue control (yields) are subject to a CPI-X pricing structure.
- The GPO contains certain pass-through provisions relating to tax and regulatory events.
- The GPO will be effective for fifteen years providing a predictable price path, with provision for revisions, to enable the distributor to better manage its risk exposure.<sup>9</sup>

For areas outside the Proposed Areas, bidders must have an Extensions and Expansions Policy as set out in the Gas Code. Consequential amendments to Reference Tariffs from new extensions and expansions are subject to provisions of the GPO.

Following the cessation of the five year franchise period, new distributors may enter the Tasmanian market. Pipelines developed by new entrants would be unregulated and therefore not be subject to the Local Regulator's jurisdiction for the purposes of price regulation. The National Gas Code at Chapter 1 sets out the ways in which an unregulated pipeline may become regulated. The Regulator will remain involved in certain aspects of conduct regulation through enforcement of the industry Licences and Codes.

The Regulator is only seeking to issue Licences and Codes for the franchise distributor and franchise retailer at this stage. Licensing provisions for new distributors will be considered towards the end of the franchise period. This is except for the possibility that a retailer may seek to enter the market for contestable customers above 500TJ.

## The Proposed Natural Gas Retail Market

The business of a gas retailer (analogous to an electricity retailer) is to sell gas by retail to end use customers. Retailers do not own regulated assets,<sup>10</sup> rather they

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<sup>8</sup> A customer consuming 30TJ would have an energy bill in the order of \$400k if translated into an electricity equivalent.

<sup>9</sup> The bidders may propose other arrangements in relation to the term of the GPO in the tender.

<sup>10</sup> The National Gas Access Code ringfencing arrangements require that a service provider (in this case a distributor) must not carry on a related business including selling natural gas.

manage supply and demand by establishing upstream and downstream relationships in the market.

The area covered by the retailer is determined directly by the area covered by the distribution system<sup>11</sup>. As noted previously, it is not possible for this area to be known prior to the finalisation of the bid process. The State's MPR provides the best possible estimate at this stage of the minimum area proposed to be covered.

Retail pricing for the Proposed Area will be set out in the GPO, akin to the pricing provisions for distribution. The GPO contains separate retail and distribution pricing sections, which can be viewed on the Regulator's website at <http://www.energyregulator.tas.gov.au>.

Pricing outside the Proposed Area will not be subject to the provisions of the GPO. There are provisions in place, however, through the Retail licenses which provide for pricing to be on a 'fair and reasonable basis'.

Following the cessation of the retail franchise period, new retailers will be free to enter the Tasmanian market. It is proposed by the State that full retail contestability in both electricity and gas will occur simultaneously at this point in time.

While the State proposes a series of tranches of retail contestability for electricity, the proposed franchise level of 500 TJ pa, essentially the threshold for limited gas contestability, will continue for the entire six year gas retail franchise. This was an element which the State tested with bidders and found to be crucial to the project's success.

There is therefore the potential for retail competition from the commencement of the market for customers using above 500TJ per annum. This will require appropriate regulatory and market arrangements to facilitate the entry of additional retailers, an issue which is currently being considered by the State with the Regulator's Office.

## **Relationships between Distributors/Retailers and Customers**

This section considers the relationships between the distributor, the retailer and the customer. This discussion is included as the arrangements for the distribution and retailing of natural gas are necessarily different from those to which Tasmanian energy consumers have experienced in electricity which has a single integrated distribution/retail entity.

The need for regulatory intervention in market conduct is generally strongest for smaller customers. This is because there is a greater potential for market power due to the dispersed nature of smaller customers, and their smaller market worth to suppliers. Licensing in Tasmania therefore focuses primarily on the non-contestable customer market.

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<sup>11</sup> As noted in respect of transmission, the *Gas Act 2000* defines retailing as the sale of gas where gas is conveyed by a gas distribution system.

It is proposed that the non-contestable customer's relationship with the gas supply industry will be through the franchised retailer. This is a system that provides greatest ease for consumers, and is well established in other States. Contestable customers may contract with other retailers or seek direct supply from the transmission company.

While all non-contestable customers will have a contractual relationship with the franchised retailer, the structure for the gas supply industry will introduce an element into the customer relationship which is unfamiliar in Tasmania in that the gas distributor and retailer are separate legal entities<sup>12</sup>. While they will have a close working relationship during market development, there may well be other retailers in the market during the franchise period, and the Regulator must ensure that these new entrants are provided with the same opportunities to grow and develop the market, in the best interests of consumers.

As the distributor will own and maintain the infrastructure delivering gas to customers, there will need to be a mechanism for providing the distributor with rights to access and protection of its equipment on customers' property. These obligations will relate to such matters as not damaging, misusing or allowing misuse of equipment and allowing access for meter reading and maintenance purposes.

It is also proposed that certain matters in relation to contestable customers be regulated, such as the need for contestable customers to have ongoing connection services which are independent of the retailer. In a contestable market, such independence greatly increases the ability for customers to change suppliers and therefore enhances new entry.

The retailer is also expected to provide a broad range of services and products (including the transfer of ownership of the gas) and billing services. These types of services generally require the retailer to have established Use-of-System agreements with the distributor to transport and deliver the gas, as well as to provide metering and other services.

As well as operational risks, there are also financial risks which will need to be managed between the parties. The distributor has a credit risk with the retailer that it must accept and manage, while the retailer has a credit risk with the customer which it must accept and manage. For the contestable customer there is a risk to the customer that the retailer will not fulfill its contract to sell gas.

These various risks require agreements between the three parties to assign rights and responsibilities in relation to end use customer supply. There are essentially two ways in which these issues may be addressed, either the distributor can rely upon the retailer to enforce the distributor's rights on its behalf or there can be a direct relationship between the distributor and the customer.

The Regulator has developed the distribution and retail Codes recognising that there will be separate legal entities for gas retail and distribution. While the Codes as drafted distinguish the respective roles of the distributor and retailer, they do not bring

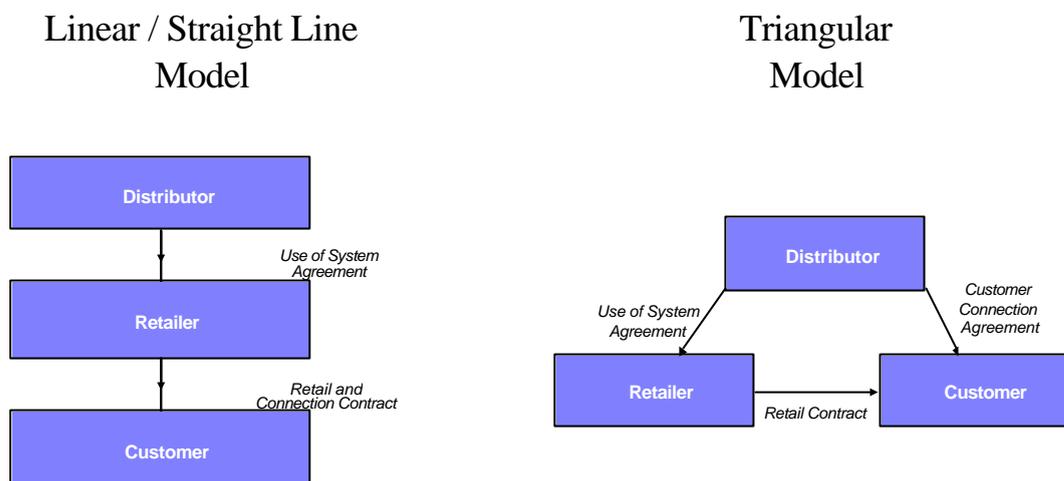
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<sup>12</sup> The Gas Code mandates that separate legal entities must be established for distribution and retailing functions. This is not a feature of the Tasmanian Electricity Code

these together as may be done to present a seamless interface between the customer and the gas market. This may be the preferred model for most customers and may be achieved through legislation and/or Codes.

The basic models for the customer relationship are illustrated in the following diagram:

**Figure 1**



The Regulator proposes minimum terms and conditions for the provision of distribution services in the draft Gas Distribution Code and proposes minimum terms and conditions for retailing in the draft Gas Retail Code.

## **Licences and Codes**

The TNGP timetable requires that a distributor and retailer be appointed no later than June 2002. This has necessitated both the State and Regulator working together to develop draft licences and codes and undertaking consultation in advance of the identity of the distributor and retailer being known. These draft codes and licences will also inform bidders and assist them in gaining an insight into the detail of regulatory arrangements in Tasmania.

At this time the following documents have been developed and comment is invited from all interested parties:

- Draft Gas Retail Licence
- Draft Gas Distribution Licence
- Draft Gas Retail Code
- Draft Gas Distribution Code

## Development of draft codes and licences

These draft codes and licences have been developed in consultation with the State and have been provided to qualified bidders with the tender Project Brief. The intention is to consult on these drafts with revised drafts settled by 31 January 2002. It is anticipated that bidders as well as other interested parties will make submissions in respect of these drafts, as part of their investigations into the Tasmanian market during bid.

The process to date and that proposed for finalisation is as follows:

- Development of draft documents in consultation with the State.
- Consultation drafts provided to bidders for distribution and retail licences.
- Public consultation including through the Gas Customer Consultative Committee which has been established by the Regulator.
- Assessment and incorporation of public comments into the draft documents.
- Release of revised drafts, including to bidders.
- Liaison with successful bidders as to the detail of the licence obligations.
- Finalisation and issue of codes and licences.

The principal regulatory instrument provided for in the legislation is the licensing of gas entities to undertake certain regulated activities in the gas supply industry. The Regulator has taken the view that licences should reflect an assessment of whether or not the applicant meets the statutory criteria for licensing, but otherwise it binds the licensed entity to the regulatory arrangements established by the Codes.

The licences have been developed by assessing the risks that the various statutory provisions are seeking to manage and then forming a view as to how the management of these risks may be best managed, either within the licences, the codes or otherwise. The final assessment of the actual licence applications will adopt a similar risk based assessment of the applicant against the statutory criteria.

In some instances there will be entity specific licensing conditions, eg the exclusive franchise. As these conditions are specific to the entity it is appropriate that they be included in a licence rather than in codes which are intended to be of general application.

The Regulator has developed an approach in electricity licensing which has been found to be efficient and effective and this has informed the development of the gas industry licences and codes. The approach is essentially one of 'light handed' regulation in that the Regulator has not sought to intervene in the day-to-day management of the entities. Rather, he seeks to ensure that all stakeholders are provided with sufficient information to properly assess the performance of the entities in meeting their regulatory obligations.

The fundamental elements of the licences are:

- the provision of relevant management plans to the Regulator;
- compliance with the Tasmanian Gas Code;
- payment of fees and charges;
- reporting obligations; and
- the provision of such assistance as the Regulator may reasonably require in the development or review of standards and procedures.

In view of the intention that gas and electricity should eventually become competitors in the energy supply market, it was considered appropriate that the regulatory arrangements applying to each of them should align to the degree that is necessary to achieve this. The customer protection standards embodied in the codes reflect the standards established in the Tasmanian electricity supply industry. In respect of technical input, reference has been made to the Victorian regulatory scheme.

Following consideration of public comments and selection of a distributor and a retailer, the successful bidders will be consulted as to the detail of the codes and licences.

This is to ensure that, while maintaining an appropriate regulatory framework, the arrangements do not impose unnecessary costs or other burdens on the licensees and customers through unnecessary changes to what may be established internal company processes.

## Tasmanian Gas Code

It is the intention of the Regulator to develop a regulatory scheme which will to the greatest degree possible be consistent across gas and electricity. This recognises that an energy market will develop with a high degree of substitutability between gas and electricity.

It is proposed that any regulatory disjunction across energy sectors be avoided to the greatest extent possible. This should facilitate a convergence in the delivery of energy products and enable energy entities, especially retailers, to gain scale efficiencies in systems and product bundling. While this is some time away for most customers due to the existence of the exclusive franchises, the appropriate regulatory framework should be developed from the start of the market.

While the Regulator has developed the Retail and Distribution Codes that are the subject of this consultation, the intention is that they will become chapters in a Tasmanian Gas Code, which will be modelled on the Tasmanian Electricity Code. There will be similar administrative and institutional arrangements. This will ensure a high degree of transparency in the regulatory scheme as well as accessibility to all interested parties.

## Licences – structure and conditions

### *Gas Act 2000*

The *Gas Act 2000* [Gas Act] provides for the issue of licences for:

- construction and operation of a distribution system for reticulated gas; and
- selling of gas by retail.

The Gas Act at section 29 suggests conditions to which a licence may be subject, including:

- conditions as to the financial or other capacity of the licensee to continue operations for the period of the licence;
- conditions requiring compliance with standards or codes specified in the licence and a safety and operating plan or safety case in accordance with Part 4 of the Gas Act;
- a condition requiring a specified process to be followed to resolve disputes between the licensee and customers; and
- where a person holds a licence authorising both distribution and retailing of gas, conditions concerning the separation of the person's affairs in respect of the distribution of gas from their affairs in relation to the retailing of gas.

### *Structure of the Licences*

The following clauses of the draft Licences relate to procedural matters, with some details varying between the licences:

- Issue of Licence – clause 2 in each licence
- Term of Licence – clause 3 in each licence. The term of the Retail Licence is 10 years and the term of the Distribution Licence is 15 years.
- Payment of Fees and Charges:
  - Distribution Licence – clause 6
  - Retail Licence – clause 9
- Communications – clause 11 in each licence
- Definitions and interpretation - clause 1 of each licence with the details as to those matters being contained in Schedule 1 of each licence.

Some non-procedural clauses are common to each licence, with details varying between the licences:

- Exclusive Franchise – clause 4 in each licence
- Assistance with Codes – clause 5 in the Distribution Licence and clause 6 in the Retail Licence

- Clause 7 in both licences concerns provision of information by the Licensee to the Director with information, including a requirement that the Licensee report material breaches of the relevant codes.
- Prudential reporting – clause 8 in both licences
- Compliance with Laws and Other Requirements – clause 10 in each licence

The two licences each contain one clause that is unique to that licence. Clause 9 of the retail licence imposes an obligation to sell on the retailer whereas clause 9 of the Distribution Licence requiring the Licensee to maintain and operate the distribution system for the term of the Licence.

### *Specific Licence Conditions*

#### Exclusive franchises

Section 30 of the Gas Act provides for the Minister<sup>13</sup> to make an order determining that a person should have an exclusive franchise to undertake a licensed activity. The Regulator is required to exercise his or her powers under the Act so as to give effect to the order. The gas tender process will result in such an order being made and consequently the licences issued by the Director must reflect that occurrence.

The Retail Licence grants an exclusive franchise to sell gas by retail to non-contestable customer in Tasmania for a non-renewable period of six years.

The Distribution Licence grants an exclusive franchise to construct and operate one or more distribution systems for a non-renewable period of five years.

#### Gas Retail Licence – Obligation to sell

Clause 5 of the Retail Licence requires the licensee on request by a non-contestable customer, to offer to sell gas on terms and conditions that meet criteria specified in that clause. If the customer accepts the offer and complies with relevant requirements under the Gas Retail Code the licensee is obliged to supply gas to the customer's gas installation.

Comments are sought in relation to the retailer's obligation to sell imposed by clause 5, particularly the requirements as to terms and conditions.

#### Assistance with Codes

Clause 5 of the Distribution Licence and clause 6 of the Retail Licence requires the Licensee to provide a proposal in relation to an element or elements of a standard or code if requested by the Regulator. The participation of the licensee in the preparation of "rules" for the industry will ensure that the regulatory scheme is efficient and will not impose unreasonable, additional costs on the distributor or retailer and, through it, the customers. That does not mean that the licensee will set the rules, but allowing input will ensure that the rules will not be incompatible with the licensee's business processes.

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<sup>13</sup> Minister for Infrastructure, Energy and Resources

At this stage, it is envisaged that the distributor will contribute to the development of a code for metering. The issues that the distributor will be required to address in a proposal regarding metering are set out in schedule 2 of the licence.

## Codes – structure and conditions

The Gas Act at section 38A provides for the Regulator to issue gas codes, which may provide for any matter relating or incidental to the regulation of the gas supply industry. A code must be consistent with the Gas Act and the public interest.

### Annual returns

The Gas Act requires a holder of licence with a term of 2 years or more to lodge with the Director an annual return containing information required by the Director. Schedule 1 of the Retail Code and schedule 2 of the Distribution Code set out the information to be included in annual returns for a retailer and a distributor respectively.

### Management Plans

Management plans have been included in the regulatory regime for gas through the Gas Retail and Distribution Codes. Management plans are prepared by the gas entity and provide for performance reporting and measurement.

The information required for annual returns includes reporting in relation to management plans.

### *Gas Distribution Code*

The purpose of the gas Distribution Code is to set out:

- the minimum standards for the operation and use of a distribution system; and
- the minimum terms and conditions (other than those covered in the proposed Gas Pricing Order) on which a distributor will provide distribution services.

Consideration of clauses:

- Clause 2 relates to the operational standards for the distribution system and the distributors' maintenance obligations.
- Clause 3 provides that customers wishing to be connected to the system must comply with the requirements set out in the Gas Retail Code and sets out obligations on the distributor with regard to connection and installation.
- Clause 4 deals with disconnection and re-connection, including circumstances and timing.
- Clause 5 sets out the distributors' obligations in relation to reliability of supply.

- Clause 6 imposes obligations on the distributor with regard to the handling of complaints and disputes.
- Clause 7 deals with the annual returns the distributors must provide. The information specified in schedule 2 must be included in the return.
- Clause 8 provides that distributors must develop, provide copies to the Director of Gas and report on success in achieving the following plans:
  1. compliance plan – setting out how the company will meet its obligations under legislation, codes licences and other regulatory instruments.
  2. asset management plan – specifies how the company’s assets will be managed; and
  3. service plan – deals with the reliability and performance of the company’s distribution system and the quality of supply of gas.

### *Gas Retail Code*

#### Purpose of the Gas Retail Code

The purpose of the Retail Code is to establish the minimum terms and conditions under which a gas retailer must sell gas to non-contestable customers. That requirement of the retailer is subject to clause 1.6 of the Code, which provides a retailer and a customer whose gas consumption or anticipated gas consumption is greater than 30 TJ per annum may agree to vary the application of the Code<sup>14</sup>.

The clauses of the Retail Code include:

- Clause 3 - connection of gas supply
- Clause 4 - disconnection for non-payment
- Clause 5 - disconnection on other grounds
- Clause 6 - reconnection
- Clause 8 - requirements as to the timing, content and calculation of gas accounts
- Clause 9 – payment methods
- Clause 10 - payment plans
- Clause 11 – account adjustments
- Clause 12- recovery of undercharges caused by illegal use
- Clause 13 - interest on overdue gas accounts

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<sup>14</sup> A variation that reduces the rights of or increases the obligations of a customer will be valid only if the customer receives some corresponding benefit, financial or otherwise (clause 1.6(c) of the Gas Retail Code).

- Clause 14 – recovery of unpaid accounts
- Clause 15 - requirement that a retailer prepare a Customer Charter to be approved by the Director of Gas
- Clause 16 – information to be provided by the retailer to the customer on request.
- Clause 17 - security for payment of gas accounts
- Clause 18 - provision for a customer being placed on a shortened collection cycle for their gas accounts.
- Clause 19 – annual returns
- Clause 20 – management plans

### Management Plans

The Retail Code requires a gas retailer to develop two management plans, namely a compliance plan and a customer service plan. A customer service plan outlines the retailer's procedures, practices and strategies to achieve and review service standards and provides for measurement of the retailer's performance against the service standards. A compliance plan sets out how the entity will meet its obligations under, legislation, codes licences and other regulatory instruments.

### Specific issues for discussion

The following issues concerning the Gas Retail Code are raised for comment:
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| <ul style="list-style-type: none"> <li>▪ Should a retailer be allowed to estimate consumption of gas by customers if a reliable meter reading cannot be obtained and charge the customer on the basis of such estimation? (clause 8.7(b)(2) and (c)).</li> <li>▪ Are the processes for disconnection set out in clauses 4 and 5 appropriate?</li> <li>▪ Is the content of annual returns set out in Schedule 1 adequate or is additional information required?</li> <li>▪ Is the process relating to a shortened collection cycle described in clause 18 appropriate?</li> <li>▪ The provision for account adjustment set out in clause 11</li> <li>▪ Clause 17 - security for payment, particularly the grounds for a retailer requiring payment of a security (clause 17.1), amount of security (clause 17.3) and use and return of security (clause 17.5).</li> </ul> |
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## Appendix A

### **Roles of the Office of the Energy Regulator**

The Office of the Energy Regulator has been established to provide support to various statutory roles and responsibilities conferred by the *Gas Act 2000*, *Gas Pipelines Act 2000*, *Gas Pipelines Access (Tasmania) Act 2000*, the *National Third Party Access Code for Natural Gas Pipeline Systems* which is a schedule to the *Gas Pipelines Access Act (South Australia) Act 1997*, and the *Electricity Supply Industry Act 1995*.

There is some complexity in the regulatory structure for natural gas, arising in part from the application of national legislation to Tasmania in relation to access to pipeline systems.

The public as customers will in large part be interested in gas and electricity as substitutes and do not in practice need to be too concerned about the detail of regulatory arrangements. Thus, the Office of the Tasmanian Energy Regulator has been established to support they relevant regulators fulfil their responsibilities.

As **Local Regulator** under the National Gas Code, the Regulator is responsible for determining that the tender process is being conducted in accordance with the Code. This is a two stage process, commencing with the approval of the Tender Approval Request (TAR), which sets out the proposed tender process in terms of its most likely outcomes and their consistency with the Code. The TAR was approved by the Regulator on 9 November 2001. Copies of the Local Regulator's decision to approve the TAR, and his reasons, are provided at <http://www.energyregulator.tas.gov.au>.

The local Regulator has two further roles in relation to the Gas Tender Process, being to:

- approve any changes to the Tender Approval Request or the Tender Guidelines during the course of the Gas Tender Process; and
- consider the Final Approval Request under the Code once a successful Bidder has been selected.

Consideration of the Final Approval Request requires the Regulator to review the conduct of the tender and determine whether it was conducted in accordance with the TAR. The Regulator must also assess the outcomes of the process against the relevant provisions of the National Gas Code, in particular whether the resultant Reference Tariffs for distribution services are consistent with section 8.1 of the Code.

As **Director of Gas** under the Gas Act 2000, the Regulator is responsible for licensing natural gas entities and for establishing, monitoring and publishing industry standards and codes. It is the gas industry Codes and Licences, which will be the primary means of regulating activity in relation to standards of service and market behaviour.

As **Electricity Regulator** the Office is concerned with licensing, codes and monitoring performance of the electricity supply industry. As the gas and electricity markets converge, the Regulator in all his capacities needs to ensure that there are no, or minimal, regulatory disjunctions between gas and electricity.