



Gas Trading Licence

Esperance Gas Distribution Company Pty Ltd

GTL11, Version 8, 1 August 2014

**Economic Regulation Authority**

WESTERN AUSTRALIA

**ENERGY COORDINATION ACT 1994 (WA)**

Licensee Name:	Esperance Gas Distribution Company Pty Ltd ABN 18 166 539 993
Licence Number:	GTL11
Commencement Date:	15 March 2004
Version Number:	Version 8
Version Date:	1 August 2014
Expiry Date:	13 March 2024

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Signed by a delegate; member; or  
the Chairman of the Economic Regulation Authority  
1 August 2014

# Trading Licence

## 1. Definitions and interpretation

1.1 In this *licence* unless contrary intention appears:

**Act** means the *Energy Coordination Act 1994 (WA)*.

**another supplier** means a person other than the licensee who holds a trading licence.

**applicable legislation** includes:

- (a) the *Act*; and
- (b) the *Regulations*.

**approved scheme** means a scheme approved under Part 2D of the *Act*.

**Authority** means the Economic Regulation Authority.

**business day** means a day which is not a Saturday, Sunday or a Public Holiday in Western Australia.

**commencement date** means the date the licence was first granted by the Authority being the date specified in *Schedule 1*.

**customer** means a person whose consumption of gas is less than 1 terajoule per year.

**customer service charter** means the charter as defined in the *Energy Coordination (Customer Contracts) Regulations 2004*.

**distribution system** means:

- (a) a system of pipelines, mains, and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of *gas* to *customers*; or
- (b) any other part of the gas distribution system (as defined in section 90 of the *Gas Corporation Act 1994* repealed by section 93 of the *Gas Corporation (Business Disposal) Act 1999*) at the time when a distribution licence is first issued for all or any part of that system (regardless of the pressure at which it is designed to operate),

and any associated apparatus, facilities, structures, plant, or equipment.

**expiry date** means the date specified in *Schedule 1*.

**gas** means any gas or mixture of gases, whether naturally occurring or manufactured, intended for use:

- (a) as a fuel; or
- (b) in any chemical process.

**gas marketing code of conduct** means the *Gas Marketing Code of Conduct* approved by the *Authority* pursuant to section 11ZPM of the *Act* (as amended from time to time).

**gas supply contract** includes a *standard form contract* and a contract other than a *standard form contract*.

**gas trading email address** means:

- (a) in relation to the *Authority*, the addressee's authorised *Authority* email address or other such email address as notified in writing to the *licensee*; and
- (b) in relation to the licensee, the email address specified in the licence application or other such email address as notified in writing to the *Authority*.

**individual performance standards** mean any standards prescribed by the *Authority* for an individual licensee pursuant to clause 17 of the *licence*.

**licence** means:

- (a) this document (excluding the title page and the second page of this document);
- (b) the Schedules of this document; and
- (c) any individual performance standards approved by the *Authority* pursuant to clause 17.

1.2 **licence area(s)** is the area(s) stated in *Schedule 1* of this *licence*.

**licensee** means Esperance Gas Distribution Company Pty Ltd, ABN 18 166 539 993.

**maintain supply** in clause 15 means, unless the *licensee* and the *customer* agree otherwise:

- (a) subject to:
  - (i) the terms of the *gas supply contract* between the *licensee* and the *customer*; and
  - (ii) paragraph (b),

the *licensee* must supply gas to the *customer* at the premises, in sufficient quantity to meet the *customer's* gas requirements, for the duration of the *gas supply contract*;

- (b) the maximum quantity of *gas* that the *licensee* is required to supply to a *customer* under paragraph (a) is the quantity of *gas* that can be physically delivered to the *licensee* by the relevant distribution licensee using standard residential delivery facilities;
- (c) the licensee must not terminate, or purport to terminate, the *gas supply contract* other than in accordance with its terms; and
- (d) if the *gas supply contract* expires or is terminated in accordance with its terms, then:

- (i) subject to subparagraph (ii), the licensee must offer to enter into a *standard form contract* with the *customer* in place of the expired or terminated contract; and
- (ii) before entering into a contract in place of the expired or terminated contract, the *licensee* may require the *customer* to meet the *licensee's* reasonable minimum prudential requirements and credit standards.

***non-standard contract*** has the meaning in section 11WB of the *Act*.

***notice*** means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with, this *licence*.

***performance audit*** means an audit of the effectiveness of measures taken by the *licensee* to meet the *performance criteria* in this *licence*.

***performance criteria*** means:

- (a) the terms and conditions of the *licence*; and
- (b) any other relevant matter in connection with the *applicable legislation* that the *Authority* determines should form part of the *performance audit*.

***publish*** in relation to a report or information means either:

- (a) posting the report or information on the *licensee's* website; or
- (b) sending the report or information to the *Authority* to be published on the *Authority's* website.

***Regulations*** mean any regulations in force from time to time made pursuant to the *Act* and includes:

- (a) the *Energy Coordination (Customer Contracts) Regulations 2004*;
- (b) the *Energy Coordination (Last Resort Supply) Regulations 2005*;
- (c) the *Energy Coordination (Licensing Fees) Regulations 1999*;
- (d) the *Energy Coordination (Ombudsman Scheme) Regulations 2004*; and
- (e) the *Energy Coordination (Gas Tariffs) Regulations 2000*.

***related body corporate*** has the meaning as defined in section 50 of the *Corporations Act 2001 (Cwlth)*.

***reviewable decision*** means a decision by the *Authority* pursuant to:

- (a) clause 12.2, 12.3;
- (b) clause 16.2;
- (c) clause 17.2;
- (d) clause 23.1; or

(e) clause 24.1,  
of this *licence*.

**Schedule** means a schedule to this *licence*.

**standard form contract** means the contract referred to in clause 12(1).

**supplier of last resort** has the meaning as defined in Division 6A of the *Act*.

**version date** means the date on which the *licence* was last amended pursuant to clause 10 or clause 11.

1.3 A reference in this *licence* to any *applicable legislation* shall be deemed to include a reference to any statutory modification, amendment or re-enactment of that *applicable legislation*.

## 2. Grant of Licence

2.1 The *licensee* is granted a licence for the *licence area(s)* to sell *gas* transported through a *distribution system* to customers in accordance with the terms and conditions of this *licence*. The licensee must comply with the terms of this *licence* including those terms contained in the *Schedules*.

## 3. Term

3.1 This *licence* commences on the *commencement date* and continues until the earlier of:

- (a) the cancellation of the licence pursuant to clause 7 of this *licence*;
- (b) the surrender of the licence pursuant to clause 8 of this *licence*; or
- (c) the *expiry date*.

## 4. Fees

4.1 The *licensee* must pay the applicable fees in accordance with the *Regulations*.

## 5. Compliance

5.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

5.2 Subject to the provisions of any *applicable legislation*, the *Authority* may direct the *licensee* in writing to do any measure necessary to:

- (a) correct the breach of any *applicable legislation*; or
  - (b) prevent the breach of any *applicable legislation* occurring again,
- and specify a time limit by which such action must be taken.

## 6. Transfer of Licence

6.1 This *licence* may be transferred only in accordance with the *Act*.

## **7. Cancellation of Licence**

7.1 This *licence* may be cancelled only in accordance with the *Act*.

## **8. Surrender of Licence**

8.1 The *licensee* may surrender the *licence* at any time by written *notice* to the *Authority*.

8.2 The surrender of the *licence* will take effect on the day that the *Authority* publishes a *notice* of the surrender in the Western Australian Government Gazette.

8.3 The *licensee* will not be entitled to a refund of any fees by the *Authority*.

## **9. Renewal of Licence**

9.1 This *licence* may be renewed only in accordance with the *Act*.

## **10. Amendment of Licence on Application of the Licensee**

10.1 The *licensee* may apply to the *Authority* to amend the licence in accordance with the *Act*.

## **11. Amendment of the Licence by the Authority**

11.1 Subject to any *applicable legislation*, the *Authority* may amend the *licence* at any time in accordance with this clause.

11.2 Before amending the licence under clause 11.1, the *Authority* must:

- (a) provide the *licensee* with written *notice* of the proposed amendments under consideration by the *Authority*;
- (b) allow 15 business days for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

11.3 This clause also applies to the substitution of the existing *licence*.

11.4 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or *licence* fee for the purpose of clause 11.1.

## **12. Customer Contracts**

- (a) Subject to the *Regulations*, the licensee must not supply *gas* to a *customer* otherwise than under:
- (b) a *standard form contract*, or
- (c) a *non-standard contract*.

12.2 The *licensee* must, if directed by the *Authority*, review the *standard form contract* and submit to the *Authority* the results of that review within the time specified by the *Authority*.

12.3 The *licensee* must comply with any direction given by the *Authority* in relation to the scope, process or methodology of the review referred to in clause 12.2.

**13. Amending the Standard Form Contract**

13.1 The *standard form contract* may only be amended in accordance with the *Act* and the *Regulations*.

**14. Supplier of Last Resort**

14.1 If the *licensee* is designated a *supplier of last resort* under the *Act*, the *licensee* must perform the functions of the *supplier of last resort*.

**15. Obligation to Maintain Supply**

15.1 If the *licensee* supplies, or within the last 12 months has previously supplied but is not currently supplying, *gas to a customer* at the premises, then subject to clause 15.2, the *licensee* must *maintain supply* to that *customer* at the premises.

15.2 If at any time *another supplier* starts to supply *gas* to the *customer* at the premises, then, from the time that supply starts, the obligation under clause 15.1 ends until such time that the *licensee* resumes supplying *gas* to the *customer* at the premises.

**16. Performance Audit**

16.1 The *licensee* must, unless otherwise notified in writing by the *Authority*, provide the *Authority* with a *performance audit* within 24 months after the *commencement date*, and every 24 months thereafter.

16.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *Authority's* standard audit guidelines dealing with the *performance audit*, including any minimum requirements relating to the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.

16.3 The *licensee* may seek a review of any of the requirements of the *Authority's* standard audit guidelines in accordance with clause 25.

16.4 The independent auditor may be nominated by the *licensee* but must be approved by the *Authority* prior to the audit pursuant to clause 16.1. Should the *Authority* reject the *licensee's* nomination of an independent auditor twice, or in the event that no nomination has been made by the *licensee* within 1 month of the date the audit was due, the *Authority* may choose an independent auditor who will conduct the audit.

**17. Individual Performance Standards**

17.1 Performance standards are contained in *applicable legislation*.

17.2 The *Authority* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this licence or the *applicable legislation*.

17.3 Before approving any *individual performance standards* under this clause, the *Authority* will:

- (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
- (b) allow 15 business days for the *licensee* to make submissions on the proposed *individual performance standards*; and



(c) take into consideration those submissions.

17.4 Once approved by the *Authority*, the *individual performance standards* are included as additional terms and conditions to this *licence*.

## 18. Approved Scheme

18.1 The *licensee* must not supply gas to customers unless the *licensee* is:

- (a) a member of an *approved scheme*; and
- (b) bound by, and compliant with, any decision or direction of the energy ombudsman under the *approved scheme*.

## 19. Gas Marketing Code of Conduct

19.1 The *licensee* must comply with the *Gas Marketing Code of Conduct*.

19.2 The *licensee* must ensure all agents and employees comply with the *Gas Marketing Code of Conduct*.

## 20. Notices

20.1 Unless otherwise specified, all *notices* must be in writing.

20.2 A *notice* will be regarded as having been sent and received:

- (a) when delivered in person to the addressee; or
- (b) 3 *business days* after the date of posting if the *notice* is posted in Western Australia; or
- (c) 5 *business days* after the date of posting if the *notice* is posted outside Western Australia; or
- (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
- (e) if sent by email when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee's *gas trading email address*.

## 21. Accounting Records

21.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.

## 22. Reporting

22.1 The *licensee* must report to the *Authority*:

- (a) if the *licensee* is under external administration as defined by the *Corporations Act 2001* (Cwlth) within 2 *business days*; or
- (b) if the *licensee* experiences a significant change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted which

may affect the licensee's ability to meet its obligations under this *licence* within 10 *business days* of the change occurring.

**23. Provision of Information**

23.1 The *licensee* must provide to the *Authority* any information that the *Authority* may require in connection with its functions under the *Act* in the time, manner and form specified by the *Authority*.

**24. Publishing Information**

24.1 The *Authority* may direct the *licensee* to *publish* any information within a specified timeframe it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.

24.2 Subject to clause 24.3, the *licensee* must *publish* the information referred to in clause 24.1.

24.3 If the *licensee* considers that the information is confidential it must:

- (a) immediately notify the *Authority*; and
- (b) seek a review of the *Authority's* decision in accordance with clause 25.

**25. Review of the Authority's Decisions**

25.1 The *licensee* may seek a review of a *reviewable decision* by the *Authority* pursuant to this *licence* in accordance with the following procedure:

- (a) the *licensee* shall make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *Authority*) of the decision; and
- (b) the *Authority* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

25.2 For avoidance of doubt, this clause does not apply to a decision of the *Authority* pursuant to the *Act*, nor does it restrict the *licensee's* right to have a decision of the *Authority* reviewed in accordance with the *Act*.

## Schedule 1 – Licensee Details

**1. Licensee Details**

1.1 Esperance Gas Distribution Company Pty Ltd

1.2 ABN 18 166 539 993

**2. Licence Area**

Goldfields-Esperance gas supply areas as shown in plan ERA-GAS-011(B)

**3. Commencement Date**

3.1 15 March 2004

**4. Expiry Date**

4.1 13 March 2024

## **Schedule 2 – Compendium of Gas Customer Licensing Obligations**

## Schedule 3 – Additional Licence Clauses

### 1. Definitions

**commence supply** means to offer, subject to clause 2.10, to enter a *standard form contract* with a *customer* who is the owner or occupier of *eligible premises* for the sale of *gas* to those premises.

**eligible premises** means premises located within the *licence area* which meet at least one of the following criteria:

- (a) connected to a *distribution system*;
- (b) to be connected to a *distribution system* prior to the requested date of commencing sale; or
- (c) so located (and, if applicable, of such a nature) that the holder of a distribution licence can be obliged under a provision of the distribution licence to connect the premises to a *distribution system* if certain conditions are satisfied.

**Minister** means the Minister for Energy or any other Responsible Minister for the Energy Portfolio in the State of Western Australia.

**relevant other supplier** means *another supplier* who is able to sell *gas* to a *customer* who is the owner or occupier of *eligible premises*.

**relevant distribution system** in clause 2 means the *distribution system* through which *gas* is transported for sale by the *licensee* under this *licence*.

### 2. Authority may direct licensee to commence supply

2.1 Subject to clauses 2.2 and 1.3, the *Authority* may direct the *licensee* to *commence supply* to a *customer* who:

- (a) is the owner or occupier of *eligible premises*; and
- (b) is specified in the direction.

2.2 The *Authority* must not make a direction under clause 2.1 in respect of a *customer* unless it is satisfied that:

- (a) the *licensee* has failed or refused to *commence supply* to the *customer*; and
- (b) the *customer's* efforts to obtain a supply of *gas* from the *licensee* were reasonably adequate.

2.3 Without limiting clause 2.2, if the *Authority* is satisfied that a *customer* has been refused supply by both the *licensee* and one or more *relevant other suppliers*, then the *Authority* must:

- (a) consider which (if any) of the *licensee* and the *relevant other supplier* or *relevant other suppliers* should be directed to *commence supply*; and

- (b) for the purposes of clause 2.3(a):
  - (i) take into account each of the matters referred to in section 11H(3) of the *Act*; and
  - (ii) endeavour to fairly apportion directions to *commence supply* between the *relevant other suppliers* and the *licensee*.
- 2.4 The *Authority* may, to assist it to determine whether to make a direction under clause 2.1, request the *licensee*, by *notice* in writing, to provide its reasons for refusing to *commence supply* to a *customer*.
- 2.5 The *licensee* must comply with a request of the *Authority* under clause 2.4 within 3 *business days* after a request by the *Authority*.
- 2.6 A direction under clause 2.1:
  - (a) must set out the *Authority's* reasons for giving the direction; and
  - (b) may be given on reasonable terms and conditions, and if so, must set out those terms and conditions.
- 2.7 Subject to clauses 2.8 and 2.10, the *licensee* must comply with a direction by the *Authority* under clause 2.1.
- 2.8 If the *licensee* is directed under clause 2.1 to *commence supply* to any *customer* at premises referred to in paragraph (c) of the definition of "*eligible premises*", then subject to clause 2.9, the *licensee* must apply to have the *eligible premises* connected to the *distribution system* and must make reasonable endeavours to meet the requirements referred to in that paragraph (c).
- 2.9 Clause 2.8 does not require the *licensee* to pay the costs of connecting premises in excess of the amount the holder of the distribution licence is required by the distribution licence to bear.
- 2.10 The *licensee* may make an offer referred to in the definition of "*commence supply*" conditional upon the *customer* meeting the *licensee's* reasonable minimum prudential requirements and credit standards.
- 3. Exchange of information between the licensee and the holder of a distribution licence**
- 3.1 Subject to clause 3.2, the *licensee* must provide reasonable information relating to its activities the subject of this *licence* as requested by the holder of a distribution licence in respect of the *relevant distribution system* to enable the holder of the distribution licence to provide for the safe and efficient operation of the *relevant distribution system*.
- 3.2 The *licensee* may refuse to provide information under clause 3.1, if its disclosure prejudices the commercial interests of the *licensee*.
- 3.3 Where the *licensee* refuses under subclause 3.2 to provide information, the *Authority* may direct the *licensee* to provide the information in a categorised or aggregated form to the extent necessary to ensure the disclosure of the information is, in the opinion of the *Authority*, not unduly harmful to the commercial interests of the *licensee*.

**4. Notification of changes to fees and charges**

- 4.1 The *licensee* must notify the *Minister* at least one month before a change to any price, price structure, fee or interest rate under the *standard form contract* is to come into effect.

## **Schedule 4 – Operating Area Map**



**Amendment Record Sheet**

Version Date	Description of Amendment
17 August 2007	Substitution of new licence
27 January 2009	Gas Marketing Standard revoked.
1 July 2009	Compendium of gas customer licence obligations
6 August 2010	Insertion of amended compendium of gas customer licence obligations and removal of customer service charter requirements
18 November 2010	Insertion of corrected compendium of gas customer licence obligations
1 January 2013	Insertion of new compendium of gas customer licence obligations (Schedule 2). New map reference ERA-GAS-011(A) following correction of licensee name
14 March 2014	Transfer and renewal of GTL11 from WorleyParsons Asset Management Pty Ltd to Esperance Gas Distribution Company Pty Ltd
1 August 2014	Amendment by substitution – Gas Licence Review 2014