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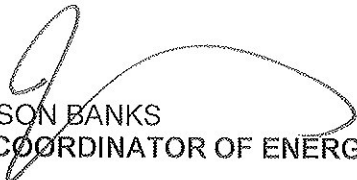
Dear Mr Phillips

SUBMISSION TO THE REVIEW OF GAS TRADING AND DISTRIBUTION LICENCES

The Office of Energy wishes to make a submission to the Economic Regulation Authority with respect to its Recommendation Report on the Review of Gas Trading and Distribution Licences.

Please find the Office of Energy's submission attached. Note that where the Office of Energy did not respond to a particular item this indicates that the Office of Energy supports the Authority's recommendation. Please contact Charles Crouch on 9420 5654 if you wish to discuss any aspect of this submission.

Yours sincerely


JASON BANKS
A/COORDINATOR OF ENERGY

23 November 2006

**OFFICE OF ENERGY SUBMISSION TO THE ECONOMIC REGULATION
AUTHORITY ON THE REVIEW OF GAS TRADING AND DISTRIBUTION
LICENCES**

ITEM 5.8 (Recommendation 8)

The Office of Energy agrees that gas is not considered an essential service, unlike electricity. Therefore consistency between the electricity and gas regulations with regard to directing the licensee to commence supply may not be appropriate. The Office of Energy supports conducting a cost benefit analysis for continuing the gas obligation.

It is noted that the Authority suggests that an Energy Code of Conduct should be established that covers both electricity and gas. The amended obligation could be reflected either in such an Energy Code or in the Energy Coordination (Customer Contracts) Regulation 2004.

ITEM 5.10 (Recommendation 10)

The Office of Energy supports the creation of a generic Energy Code of Conduct. However, the creation of such a Code and any legislative changes will need to be progressed through a comprehensive review by Government. The *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* is made under the *Electricity Industry Act 2004* and it is not appropriate that this statute be used to provide for matters not related to electricity. The Office of Energy suggests that it would be more appropriate to amend the *Energy Coordination Act 1994* to provide for an Energy Code of Conduct.

The Office of Energy notes that it may not be appropriate to streamline all obligations in the gas and electricity sectors as there are some differences. For example, gas is not an essential service and therefore some obligations may not need to be as stringent as for electricity. Gas and electricity are also supplied through different infrastructure and this will need to be taken into account in determining the obligations to be imposed on service providers. Therefore separate provisions for gas and electricity should also exist within the Energy Code of Conduct. However, where possible, gas and electricity obligations should be consistent.

ITEM 5.11 (Recommendation 11)

If an Energy Code of Conduct is established then the Office of Energy considers that it should address internal complaints handling procedures and requirements.

ITEM 5.14 (Recommendation 14)

The Office of Energy considers that safety issues in gas and electricity are different and therefore identical requirements are not appropriate.

The Office of Energy also notes that currently the Energy Code of Conduct does not exist and therefore the clause should remain until an Energy Code comes into effect.

ITEM 5.15 (Recommendation 15)

The Office of Energy agrees with the Authority's recommendation. This amendment will further relax barriers to entry and simplify regulatory requirements.

ITEM 5.23 (Recommendation 5.23)

The Office of Energy supports the Authority's recommendation that Clause 23 of the trading licence, regarding exchange of information between the licensee and the holder of a distribution licences, remain.

The Office of Energy agrees with the Authority's comments that the holder of a distribution licence needs information from the holder of a trading licence to assist in planning the expansion of the gas distribution network. Clear evidence would need to be presented that the distributor could properly plan and manage the expansion of the distribution system to meet growing customer number without information from the trader if this clause were to be removed.

ITEM 5.24 (Recommendation 24)

The Office of Energy considers that it is unclear that the State and the Minister would be indemnified if this clause is removed. While, there may be some arguments for not indemnifying the State and the Minister, the Office of Energy does not consider a sufficient case has been made at this stage. This issue is relevant across a range of Government licensing, approvals and access rights instruments, and would be best addressed from a whole-of-government risk management perspective. Neither the *Economic Regulation Authority Act* nor the *Public Sector Management Act* addresses the exposure of the State to claims arising from activities of licensed entities.

ITEM 5.26 (Recommendation 26)

The Office of Energy considers that Clause 26 of the Trading Licence should be retained in a modified form that allows useful information on key consumer related outcomes for gas to be provided to Government. While there is an admitted inconsistency in that a similar provision does not exist in electricity, it may be that the best way to address this is to add in a requirement for electricity to provide similar information. This matter will be addressed as part of the consideration of full retail contestability in electricity.

ITEM 6.7 (Recommendation 46)

The Office of Energy supports the Authority's recommendation to retain Clause 7 of the Distribution Licence (Continuous Operation).

The Office of Energy notes that the Authority believes that no equivalent obligation exists with respect to the electricity distribution licence template. As electricity is an essential service it would seem that a clause in the electricity licence to require the distributor to continuously operate an electricity distribution system should be considered.

ITEM 6.8

a. **Should the Regulator or Government determine the extent of the obligation?**

The Office of Energy believes that the extent of the obligation to connect should lie with the Government rather than be determined by the Regulator, as Government is better placed to balance potentially competing objectives and regulate for obligations that may impose significant costs.

b. **Should the existing obligation be amended consistent with electricity in terms of distance and the requirement that the customer must pay the least (total) cost of connection?**

The existing obligation with regard to payment of the cost of connection requires that the distributor connect the customer if the least cost of establishing the connection does not exceed \$650 or if the customer is willing to bear the excess amount. The obligation also requires that the distributor pays the first \$650 of the connection costs and the customer pays the balance.

The requirement clearly imposes some costs on the service provider by requiring it to connect some properties which it would not do on a purely commercial basis. The Gas Tariff Regulations prescribe natural gas prices that retailers in Western Australia must not exceed when selling gas to small use customers. As network tariffs form part of the delivered costs, this effectively provides a ceiling beyond which gas suppliers will not be able to recover costs of delivered gas from retail customers, whether the additional cost results from higher wholesale gas prices or infrastructure costs.

Although industry has not raised any issues about the obligation causing economic burden, the principle of user pays should be considered in deciding whether to retain the obligation for the distributor to pay the first \$650 of each connection cost. If it is decided that an Energy Code of Conduct should come to existence then it may be appropriate to consider whether equivalent arrangements need to be in place for gas and electricity (although differences in the delivery and infrastructure of gas and electricity will need to be taken into account).

The Office of Energy also considers that there is no automatic need for electricity and gas to have the same distance requirement. Gas and electricity are delivered by different means, one by pipes and the other by wires, respectively. Making the distance requirement the same for both gas and electricity would ignore the different infrastructure requirements and likely differences in costs.

c. **Should the existing obligation apply to existing licensees but not to future licensees?**

If the Regulator determines that the obligations should be amended then the new obligations should apply to existing licensees and to future licensees.

The term of a distribution licence is up to 21 years and all current distribution licences commenced only a few years ago. If new obligations are only placed on future licensees, due to the significant amount of time that a distribution licence is in force, it could lead to an unlevel playing field.

ITEM 6.14 (Recommendation 53)

The Office of Energy believes that Clause 14 of the Gas Distribution Licence (future development of licensed distribution system) does not seem to impose an undue burden on industry. Therefore the Office of Energy does not see a compelling reason to change the obligation. However, the Office of Energy notes that although there are consumer benefits to the expansion of the distribution system this must be done on a commercial basis. The Office of Energy also agrees with the Authority seeking public comment on this issue before forming a position.

ITEM 6.24 (Recommendation 63)

The Office of Energy supports the retention of Clause 24 of the Gas Distribution Licence (proposed cessation or decrease in activities). The Office of Energy also supports amending the clause to be consistent with electricity.

ITEM 9 (Recommendation 79)

While the Office of Energy acknowledges that there are situations in which a customer of a gas trading licensee may be supplying a third party with gas within the boundaries of a single site, it remains unclear whether or not this is actually on-selling of gas or merely the division of gas expenses between the users on a single site.

Similar issues arise with the potential on-selling of electricity. Although the Government has established a licence exemption for the supply of electricity in all grouped housing arrangements, this is quite recent and it remains to be seen whether this is a preferable outcome to creating a different class of licence or introducing "safety net" consumer protection provisions and amending the licensing requirements to exclude such "incidental suppliers". In particular, the provision of these licence exemptions for residential supplies is conditional but the enforcement of conditions is difficult and can only be undertaken by Government. It would be undesirable to replicate these arrangements for gas supplies, especially in residential complexes.

The licence exemptions for supplying electricity to a third party in commercial complexes are unconditional. While there have been few instances of commercial consumers complaining about this lack of specific protection for their energy consumption, it remains to be seen whether these arrangements are appropriate. Again, as this is quite recent, it is difficult to determine whether or not licence exemptions are desirable even in a commercial situation.

An investigation of the options for regulating these types of supply situations, including the amendment of the statutory licensing requirements for both gas and electricity supplies is required. In doing so, the options in terms of minimising the likely burden and costs of regulation on these suppliers who do not provide energy supplies as part of their core business and setting an appropriate level of consumer protection for their customers will also need to be assessed. The cost and practicality of enforcing these

consumer protection measures will also need to be a major consideration of this exercise. It is expected that this could be undertaken within the context of the development of a consolidated Energy Code of Conduct.

However, it is important to realise that whatever arrangements are developed to regulate these supply relationships, it is likely that there will be some anomalies requiring a case-by-case assessment and possible exemption from the relevant gas and/or electricity licence obligations.

At this stage, the Office of Energy does not believe there is a good case for enactment of a gas licence exemption on a similar basis to electricity licence exemptions.

ITEM 10 (Recommendation 80)

The Office of Energy agrees that the need to revise the gas licence fee structure should be considered. However, the cost of regulating licences may be different for gas and electricity and this may need to be taken into account. The Office of Energy would appreciate further information on this matter from the Authority.

ITEM 11.3 (Recommendation 82)

The Office of Energy believes that generally changes to the licence terms and conditions would be undertaken through a public process by the Authority. However, in some cases it may be appropriate for Government to be allowed to change the licence terms and conditions for policy reasons, and such a head of power would provide this flexibility.

ITEMS 11.4 and 11.5 (Recommendations 83 and 84)

While the Office of Energy acknowledges the need for the making of Codes within a gas regulatory framework, there also seems to be a need to provide the Minister for Energy, as a representative of Executive Government, with the power to amend any such codes for gas and electricity. This need is driven by the general principle that any law that determines the scope of any rights and obligations a party should be developed by Executive Government and scrutinised by Parliament, rather than an independent regulator. This is due to the need for Government to fully consider the significant market development and social policy issues associated with the gas and electricity sectors in determining these rights and obligations. This is especially relevant to consumer protection policy matters.

The Office of Energy agrees that consideration should be given to amending the *Energy Coordination Act 1994* and the *Electricity Industry Act 2004* in order to align the processes for creating, reviewing and amending gas and electricity codes as licence conditions.

The Office of Energy agrees that a consolidated Energy Code could reduce the burden and costs of gas and electricity regulation and potentially provide a more balanced and consistent approach to protecting the rights of energy consumers.