



**GAS DISTRIBUTION LICENCE**

**Gas Networks Victoria Pty Ltd  
(ABN 69 163 231 696)  
(the Distributor)**

**As varied on 10 March 2021**

Essential Services Commission  
Level 8, 570 Bourke Street,  
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## 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. CHANGE OF CONTROL

- (a) The *Distributor* must give the *Commission* a notice if any event occurs, any decision by the *Distributor* is made, or any other circumstances exist that will effect a change of control of the *Distributor*.
- (b) The notice required under clause 13(a) must set out particulars of the relevant event, decision or circumstance as soon as practicable and in any case not later than 10 Business Days after the *Distributor* becomes aware of the event or circumstance or makes that decision.

## 14. DEFINITIONS AND INTERPRETATION

### 14.1 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;

"*Change of control*" occurs in relation to the *Distributor* if:

- (a) an entity that Controls the *Distributor* ceases to Control the *Distributor*; or
- (b) an entity that does not Control the *Distributor* starts to Control the *Distributor*;  
Provided that no change of control will be deemed to have occurred where the ultimate holding company that Controls the *Distributor* remains the same or the change in Control results from the acquisition or cancellation of, or dealing in, securities which are traded on a recognised financial market.

“*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);

“*Control*” in respect of an entity has the same meaning given in section 50AA of the Corporations Act.

“*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 Gas Networks Victoria 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).

## **14.2 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*.

## **SUMMARY**

In accordance with the provisions of section 38(1) of the Gas Industry Act 2001 (Vic) (Industry Act), the Essential Services Commission (the commission) has decided by agreement to vary the licence issued to Enwave Victorian Networks Pty Ltd (ABN 68 163 231 696) to reflect its change of name to Gas Networks Victoria Pty Ltd and to require notification by the licensee to the commission of any change of control.

## **BACKGROUND**

### ***Variation to the licence***

Section 38(1) of the Industry Act provides that the commission may vary a licence in accordance with the procedures specified in the licence conditions, or by agreement between the commission and the licensee.

### ***The Licence***

Enwave Victorian Networks Pty Ltd (Enwave) is the holder of a gas distribution licence (licence) issued on 19 December 2016.

The licence specifies at clause 3(b) that the commission may at any time agree with the Distributor that this licence should be varied.

### ***The application***

On 31 August 2020 Gas Networks Victoria wrote to the commission notifying the commission that Enwave had been renamed to Gas Networks Victoria and seeking agreement that the name be changed on the licence.

Noting that the licence did not require the licensee to provide notification for change of control, commission staff took the opportunity to seek to update the licence by agreement to include this requirement. On 26 February 2021, the applicant wrote to the commission staff confirming agreement with commission staff to vary the licence to include a requirement to notify the commission in relation to change of control pursuant to a new clause 13 and amendments to the definitions.

## **CONSIDERATION OF THE APPLICATION**

Section 38(1)(b) of the Industry Act provides that a licence may be varied by agreement between the commission and the licensee. Variation by agreement is also reflected in the terms of the licence. This variation has been requested to reflect a change in name of the licensee that occurred on 29 August 2020 and there was agreement by Gas Networks Victoria to include an obligation in the licence that requires notification to the commission of any change of control.

## **DECISION**

The commission has decided pursuant to section 38(1) of the Industry Act to vary by agreement the name on the licence to distribute gas in Victoria from Enwave Victorian Networks Pty Ltd to Gas



Networks Victoria Pty Ltd and to require notification by the licensee to the commission of any change of control.

**THE COMMON SEAL**  
**of the ESSENTIAL**  
**SERVICES COMMISSION**  
was affixed pursuant to the  
authority of the Commission  
on 11 March 2021

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Kate Symons  
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 <i>Commission</i>	5 April 2017	To amend the Distributor's name from 'Brookfield Regional Networks (Victoria) Pty Ltd' to 'Enwave Victorian Networks Pty Ltd'.
By the <i>Commission</i>	10 March 2021	To amend the Distributor's name from 'Enwave Victorian Networks Pty Ltd' to 'Gas Networks Victoria' and to insert clause 13 regarding notification in the event of a change in control