

OFFICE OF ENERGY REPORT ON GAS LICENCE EXEMPTIONS UNDER ENERGY COORDINATION ACT 1994 MARCH 2008

ISSUE

An exemption from licensing under the Energy Coordination Act 1994 for:

1. property owners/managers “on-selling” gas to residents; and
2. property developers constructing gas reticulation systems in order to connect developed lots to the gas distribution system at a future time.

RECOMMENDATION

That the Office of Energy recommends to the Minister for Energy that he approves the briefing of Parliamentary Counsel to draft licence exemptions (as outlined in this report) for the approval of the Governor.

ON-SELLING OF GAS TO RESIDENTS IN GROUP HOUSING

Background

The Secretariat of the Economic Regulation Authority wrote to the Office of Energy indicating that it has legal advice that there may be an ambiguity within the Energy Coordination Act 1994, concerning whether operators of multi unit residential developments (strata title management companies) and retirement villages need to be licensed for “on-selling” gas. Generally the on-selling of gas is far less prevalent than the on-selling of electricity.

The Office of Energy sought advice of State Solicitor with respect to following.

1. Are persons or organisations who are the account holders in a group housing complex required to hold a trading licence under the Energy Coordination Act 1994 if:
 - they simply collect each resident’s share of the invoice and combine these funds to pay the “master” account; or
 - they add a margin to each resident’s share of the invoice to cover administration costs or to make a profit on the transaction?
2. In the event there is an ambiguity with respect to the need to be licensed under the Energy Coordination Act 1994, does a specific exemption, as suggested by the Economic Regulation Authority, provide adequate legal clarity?

The State Solicitors response indicates that on balance an exemption should be granted to clarify that no licence is necessary.

Public Submissions and Consultations

No public submissions were received. The Office of Energy consulted the Secretariat of the Economic Regulation Authority and Westnet Energy. No concerns were raised with the proposed exemption.

Case for a Licence Exemption

Under 11H of the Energy Coordination Act 1994, the Governor may make an Exemption Order. The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters:

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of gas customers generally or of a class of gas customers;

- (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- (f) the importance of competition in gas industry markets;
- (fa) the policy objectives of government in relation to the supply of gas;
- (g) any other matter that he or she considers relevant.

The licensing requirements of the Economic Regulation Authority under the *Energy Coordination Act 1994* can be quite onerous for those operators whose core business is not that of a gas or electricity utility. Requiring property owners and or managers to be licensed for the purpose of the distribution and sale of gas to residents in a retirement village or a block of apartments, if they are purely passing through the cost of the gas, would put an unnecessary administrative and cost burden on property managers and owners without providing any public benefits. In addition, the requirement to be licensed would be an impediment to the reticulation of gas in group housing situations.

The Office of Energy has concluded that granting an exemption to all property owners and managers for the distribution and sale of gas to residents/tenants (if they are purely passing through the costs of that gas) to residents and tenants in group housing situations is not contrary to the public interest.

Recommendation

It is proposed that property owners and managers be exempt from the need to hold a licence under the Energy Coordination Act 1994. That the exemption, be a general unconditional exemption subject to those parties, "on selling" gas, only passing through the cost of the gas.

CONSTRUCTION OF GAS RETICULATION SYSTEMS BY PROPERTY DEVELOPERS

Background

WestNet Energy (formerly Alinta Networks) and the Secretariat of the Economic Regulation Authority advised the Office of Energy that the Capricorn Village Joint Venture (CJV) was constructing a gas distribution system. It was as part of providing services to the residential lots in a major residential land development near Yanchep. CJV decided to construct the gas reticulation system servicing its land subdivision although connection to the nearest gas main was some 10 to 15 kilometres and about 2 years away from being extended to the development.

CJV commenced construction of the gas distribution system in January 2006. It was being constructed to WestNet Energy networks standards and audited by the Office of Energy Safety. In the process of the audit, Energy Safety raised the issue of the need for a licence for construction.

The Secretariat of the Economic Regulation Authority was of the view that while the drafter's of the Energy Coordination Act 1994 may not have foreseen property developers installing gas reticulation systems as part of their servicing of a development or intended for that construction to be licensed, a simple reading of the Act seems to indicate that construction of a gas distribution system was licensable. It was further of the view that the Office of Energy should consider providing CJV with an exemption from the need to be licensed.

The OOE sought the advice of the State Solicitor, who confirmed that a land developer constructing a gas reticulation system (not immediately planned to be connected to a gas supply and distribution) requires a licence or licence exemption.

Subsequently, the Office of Energy became aware that Heath Developments were constructing a stand alone liquid petroleum gas reticulation system at its Oyster Harbour development in Albany in conjunction with Wesfarmers/Kleenheat.

Public Submissions and Consultations

No public submissions were received. The Office of Energy consulted the Economic Regulation Authority, the Office of Energy Safety, Capricorn Village Joint Venture, Wesfarmers/Kleenheat and Westnet Energy.

No concerns were raised with the proposed exemption.

Case for a Licence Exemption

Under 11H of the Energy Coordination Act 1994, the Governor may make an Exemption Order. The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters:

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of gas customers generally or of a class of gas customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- (f) the importance of competition in gas industry markets;
- (fa) the policy objectives of government in relation to the supply of gas;
- (g) any other matter that he or she considers relevant.

Licensing requirements under the Energy Coordination Act 1994 can be quite onerous and could act as an impediment to land developers servicing residential subdivisions with a gas reticulation system particularly in areas ahead of the property development front.

It is in the public interest for land developers to be encouraged to service residential lots with a gas reticulation system in preparation for when a gas main or supply reaches the development. The cost of constructing a gas reticulation system, at the same time as other services, is approximately 20% of the cost of construction of a gas reticulation system later. In addition, retrofitting a subdivision with a gas distribution system is in most cases non commercial for the gas distributor.

The Office of Energy has been advised by energy utilities, consultants working for the property development industry and individual property developers, that property developers are increasingly likely to construct gas distribution systems without immediate connection to a gas supply or distribution system.

Not only is the case for a licence exemption for land developers constructing gas distribution systems not contrary to the public interest but it is, given the criteria, in the public interest.

The exemption will (when gas is supplied):

- improve the market share and distribution of gas;
- result in environmental and economic benefits;
- result in energy cost savings and improved energy reliability to residents; and
- support Government Policy to encourage extension of the gas distribution system.

Concerns

The Office of Energy is concerned that land will be sold with the understanding or a promise that a gas distribution system is in place and future connection is assured but is not necessarily delivered.

If:

- there is a considerable amount of time between the time the distribution system is constructed and gas becomes available;
- the system is not constructed in compliance with appropriate standards;
- there is no plan for maintenance of the system or the system is constructed without future maintenance in mind;
- no access is available for maintenance (the exemption removes the right of access); and
- there is no plan for hand over of ownership of the distribution system to a licensed distributor,

then it is possible, that when gas does become available, a gas distributor/retailer will not connect as the system does not have integrity and the cost to ensure the system is up to standard and the potential returns would make connection unviable.

Appropriate Standard of Construction

The appropriate standard for the construction of a gas distribution system is the *Guidelines for Design and Planning of Interconnected Gas Distribution Networks in WA* produced and published by the Office of Energy Safety.

Agreement Between Property Developers and Licensed Distributor

The public policy aim of the Office of Energy is to remove the regulatory impediment (the need to be licensed) preventing land developers from installing gas distribution systems at the optimum time in terms of cost and potential penetration of the market for gas but also to ensure there is a high probability of future connection.

The Office of Energy considers that a property developer constructing a gas distribution system to service lots for future connection to a gas supply system should have an agreement with a licensed distributor that addresses maintenance and ownership (at end of construction). This would ensure that property developers have a relationship with a licensed gas distributor that would have the expertise and the commercial motivation to advise the property developer such that the distribution system was constructed with the best opportunity for future connection. In addition, at the end of construction the system would be handed over or gifted to the licensed distributor thus resolving access, future maintenance and responsibility issues.

The agreement between property developers and licensed distributors has to include the following:

1. Responsibility for the maintenance of the gas distribution system until gas introduced to the system.
2. Ownership of the gas distribution system shall be transferred to a licensed gas distributor when construction is completed and the final system audit is completed.
3. The network design must meet a licensed gas distributor's standards and requirements.
4. The network has to be constructed by a contractor/person approved by a licensed distributor in accordance with Office of Energy Safety Guidelines.
5. All construction work must be audited by a licensed distributor (or nominee) to ensure it complies with all codes and guidelines.
6. A licensed distributor must be provided with documentation and plans of all the details of the constructed network.

The property developer and licensed distributor, on completion of the agreement should provide written advice to the Coordinator of Energy that such an agreement has been made and the location of the property development to which it applies.

Recommendation

Property developers who construct gas distribution systems to service lots within the property being developed be provided an exemption from the requirement to be licensed under the Energy Coordination Act 1994 subject to the following conditions.

Conditions

Standards and Audit

1. That the distribution system under construction complies with:
 - the *Gas Standards (Gas Supply and System Safety) Regulations 2000*; and
 - the *Guidelines for Design and Planning of Interconnected Gas Distribution Networks in WA*
2. That all construction work is audited by the Licensed Distributor (or nominee) to ensure that the constructed gas distribution system complies with all appropriate regulations, codes and guidelines.

Agreement

That the Property Developer and the Licensed Distributor shall provide the Coordinator of Energy with written advice that indicates (to the satisfaction of the Coordinator of Energy) that an agreement is in place and includes the following:

1. Responsibility for the maintenance of the gas distribution system until gas is introduced to the constructed distribution system.
2. Transfer of ownership of the gas distribution system to the Licensed Gas Distributor when construction and "final system audit" is completed.
3. The Licensed Distributor must be provided documentation and plans of all details of the constructed distribution system.
4. The Licensed Distributor shall treat the constructed distribution system in accordance with all provisions of its Licence.

Date of Operation

That the exemption should apply from 1 January 2006