



**GAS RETAIL LICENCE
(RESTRICTED)**

**BHP PETROLEUM (BASS STRAIT) PTY LTD
ACN 004 228 004**

**As varied on
1 October 2002**

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1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, words and phrases appearing in italics have the meaning given to them in part 1 of schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in part 2 of schedule 1.

2. GRANT OF LICENCE

2.1 Subject to:

- (a) clause 2.2 and other conditions set out in this licence; and
- (b) any prohibition on the *Licensee* from selling gas to persons or classes of persons specified by any *order* in force under section 35 of the *Act* and deemed by that section to be included in a condition of this licence,

the *Licensee* is licensed to sell gas by retail.

2.2 This licence does not authorise the sale of gas from a *supply point* to a person unless:

- (a) the person has purchased not less than 500,000 GJ of gas from that *supply point*, or an *ancillary supply point*, during the 12 months immediately preceding 1 September 1998 or the commencement of the *supply*, whichever is the later;
- (b) the *supply point* is new and the *Commission* is satisfied on reasonable grounds that the person will purchase not less than 500,000 GJ of gas from that *supply point* within a period of 12 months during the period of 3 years next following the commencement of the *supply*; or
- (c) the person is a person to whom a determination of the *Commission* under section 37(1)(c) of the *Act* applies.

3. TERM

3.1 This licence first had effect on 2 August 2000 and has been varied on the dates set out in schedule 2.

3.2 The *Commission* may revoke this licence in accordance with clauses 3.3 or 3.4.

3.3 The *Commission* may at any time agree with the *Licensee* that this licence should be revoked, in which case the term of this licence ends on the day agreed. If the *Licensee* has ceased to sell gas by retail and has satisfied the *Commission* that no former *customer* of the *Licensee* would suffer any prejudice by a revocation of this licence, the *Commission* must agree to a request by the *Licensee* that this licence be revoked.

- 3.4 The *Commission* may at any time give notice of revocation in accordance with clauses 3.5 and 3.6 to the *Licensee* if:
- (a) the *Licensee* does not comply with an *enforcement order* or an *undertaking*; and
 - (b) the *Commission* is satisfied that revocation of this licence is necessary having regard to the *policy objectives*,
- in which case, subject to clause 3.7, the term of this licence ends on the expiration of the period of the notice.
- 3.5 If the *enforcement order* or *undertaking* relates to a breach of this licence which in the *Commission's* opinion is causing serious and immediate detriment to *customers*, the *Commission* must give at least 5 *business days* notice of revocation to the *Licensee* under clause 3.4.
- 3.6 If clause 3.5 does not apply, the *Commission* must give at least 20 *business days* notice of revocation to the *Licensee* under clause 3.4.
- 3.7 The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3.4 if, before the expiration, the *Licensee* complies with the *enforcement order* or the *undertaking* (as the case may be).

4. RELIABILITY OF SUPPLY

- 4.1 The *Licensee* must comply with any standard relating to the reliability of supply of gas which is determined under section 33 of the *Act*. If any standard is so determined, the *Licensee* must, whenever required by the *Commission*, demonstrate its actual and prospective compliance with such standard.
- 4.2 Except in relation to a sale of gas where the *customer* rather than the *Licensee* is responsible for arranging *supply*, the *Licensee* must notify the relevant *distributor* or *transmission company* (and *VENCorp* as required) of the *Licensee's* contractual arrangements with the *Licensee's customers* relating to interruption or curtailment of *supply* within 21 *business days* of entering into such arrangements.
- 4.3 If the *Licensee* is notified by a *distributor* or *transmission company* of any interruption or curtailment of delivery of gas at a distribution or transmission delivery point, the *Licensee* must use reasonable endeavours to ensure that its *customers* comply with any reasonable requirement set out in the notice.

5. STATEMENT OF CHARGES

- 5.1 A statement issued by the *Licensee* to a *customer* requiring payment for gas sold to that *customer* must, if and when the *Commission* considers it reasonable having regard to the cost to the *Licensee*:
- (a) include as a separate item in each statement requiring payment for gas sold to that *customer* the total of amounts charged by a *distributor* (if any) and

the total amounts charged by a *transmission company* in respect of that *customer* based on the amounts directly attributable to that *customer* or, to the extent that amounts are attributable jointly to that *customer* and another *customer*, based on a fair and reasonable allocation of the amounts; and

(b) comply with any applicable *guidelines*.

5.2 Any questions as to the fairness and reasonableness of an allocation of an amount referred to in clause 5.1 shall be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness and reasonableness of the allocation.

6. CONFIDENTIALITY

The *Licensee* must comply with any *guideline* concerning the use or disclosure of *personal information* about a *customer*.

7. CO-OPERATION WITH VENCORP

7.1 As soon as practicable after any request made by *VENCorp*, the *Licensee* must supply such information to *VENCorp* as *VENCorp* may reasonably require to perform its functions and exercise its powers under the *Act*.

7.2 A question as to the reasonableness of a requirement by *VENCorp* for information as contemplated by clause 7.1 shall be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

8. COMPLIANCE WITH ORDERS, CODES AND GUIDELINES

8.1 As well as complying with this licence, the *Licensee* must comply with all applicable provisions of:

(a) any *order*;

(b) any *retail rules*;

(c) the *Gas Distribution System Code*;

(d) any *guideline* identified as one with which the *Licensee* must comply in section 64(a) of the *Act*, in this licence or in a code referred to in this clause 8.1;

(e) any scheme or schemes approved by the *Commission* under sections 62 and 63 of the *Act*;

(f) a code dealing with *retailers'* marketing conduct which has been developed by *retailers*, to the extent required by the *Commission* (after consultation with the *Licensee*) in a *communication* identifying the code; and

(g) if after consultation with *retailers* and representatives of *customers* there is no identified code to which paragraph (d) refers, a code or *guideline*

dealing with *retailers'* marketing conduct issued by the *Commission* after further consultation with the *Licensee* and representatives of *customers* and identified in a *communication* given by the *Commission* to the *Licensee*.

- 8.2 The *Licensee* must monitor its compliance with this licence and any *order*, code or *guideline* it is required to comply with under clause 8.1.
- 8.3 If the *Licensee* becomes aware of a material breach of this licence or any *order*, code or *guideline* by the *Licensee*, the *Licensee* must notify the *Commission* of the material breach as soon as practicable.

9. DISPUTE RESOLUTION

If requested by the *Commission* the *Licensee* must develop, submit to the *Commission* for its approval and implement a scheme for the investigation and resolution of disputes between it and:

- (a) a *customer* about the *Licensee's* services, billing and charging; and
- (b) aggrieved persons about the manner in which the *Licensee* conducts its *retail business* generally.

10. SEPARATE ACCOUNTS

The *Licensee* must ensure that separate accounts are prepared for its *retail business* in accordance with any *guideline* published for this purpose.

11. PROVISION OF INFORMATION TO THE COMMISSION

The *Licensee* must provide to the *Commission*, in the manner and form decided by the *Commission*, such information as the *Commission* may from time to time require.

12. PAYMENT OF LICENCE FEES

- 12.1 The *Licensee* must pay as directed by the *Commission* a licence fee determined in accordance with section 30 of the *Act*.
- 12.2 The *Licensee* 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 *Act*.

13. ADMINISTRATOR

- 13.1 If an *administrator* is appointed to the *Licensee's* business under section 41 of the *Act*, the *administrator* must exercise its functions and powers in such a manner as may be specified by the *Commission* in the instrument of appointment.
- 13.2 The *Licensee* must indemnify the *administrator* as if the *administrator* were an officer of the *Licensee*, to the maximum extent permitted in respect of an officer under the *Corporations Act 2001* (Cth).

14. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws (including the *Act* and *gas safety obligations*).

15. VARIATION

This licence may be varied in accordance with section 38 of the *Act*.

16. TRANSFER OF LICENCE

This licence may be transferred in accordance with section 40 of the *Act*.

17. COMMUNICATIONS

17.1 A *communication* must be in *writing*.

17.2 A *communication* is to be regarded as having been given by the sender and received by the addressee:

- (a) when delivered in person to the addressee;
- (b) 3 *business days* after the date of posting, if the *communication* is posted within Australia;
- (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia;
- (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
- (e) when it is an electronic *communication*, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

**THE COMMON SEAL of
THE ESSENTIAL SERVICES COMMISSION**

was affixed pursuant to
the authority of the Commission
on 1 October 2002

JOHN C. TAMBLYN
Chairman

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this licence:

Act means the *Gas Industry Act 2001*.

administrator means an administrator appointed by the *Commission* under section 41 of the *Act* in respect of the *Licensee's retail business*.

ancillary supply point has the meaning given to that term by the *Gas Industry (Residual Provisions) Act 1994*.

business day means a day other than a Saturday or Sunday or a public holiday appointed under the *Public Holidays Act 1993*.

Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*.

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

customer, unless the context otherwise permits or requires, means a person who buys or may want to buy gas from a *retailer* but excludes other *retailers*.

distribution system means in relation to a *distributor* a system of gas distribution pipelines (generally at pressure levels of 1050 kPa or below) which that *distributor* uses to *supply* gas to *customers*.

distributor means a person who holds, or is exempt from holding, a *distribution licence* under the *Act*.

enforcement order means a provisional or final order made and served by the *Commission* under section 53 of the *Essential Services Commission Act 2001*.

Gas Distribution System Code means the code of that name certified by the *Commission*.

gas safety obligations means any obligation of the *Licensee* arising under or in relation to the *Gas Safety Act 1997* or regulations made under that Act.

guideline means a guideline published by the *Commission*.

Licensee means BHP Petroleum (Bass Strait) Pty Ltd, ACN 004 228 004.

Minister means the person who is the Minister for the purposes of the relevant section of the *Act*.

order means an order in council made or in force under the *Act*.

personal information means information or opinion which constitutes “personal information” under the *Privacy Act 1988 (Cth)* or would constitute personal information if the term “individual” as used in that Act extended to any type of **customer**, including a body corporate.

policy objectives means the objectives specified in section 18 of the *Act* and section 8 of the *Essential Services Commission Act 2001*.

retail business means the business that a **retailer** carries on under its **retail licence** or exemption granted under the *Act*.

retail licence means a licence granted under the *Act* to sell gas by retail.

retail rules means the relevant retail gas market rules (as defined in Division 2 of Part 4 of the *Act*) applicable to **supply points** in respect of which the **Licensee** sells gas.

retailer means a person who holds, or is exempt from holding, a **retail licence** under the *Act*.

supply, in relation to gas, means the delivery of gas.

supply point has the meaning given to that term by the *Gas Industry (Residual Provisions) Act 1994*.

transmission company means gas transmission company within the meaning of the *Act*.

undertaking means an undertaking given by the **Licensee** under section 53(5)(a) of the *Essential Services Commission Act 2001*.

VENCorp means Victorian Energy Networks Corporation established under Part 2A of the *Gas Industry (Residual Provisions) Act 1994*.

writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2. INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings and footnotes are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this licence;
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- (g) a reference to any statute including the *Act* and 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;
- (h) 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;
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- (k) 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
- (l) 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*.

**SCHEDULE 2
VARIATIONS TO THE LICENCE**

This licence which was originally issued on 2 August 2000 has been varied by the following:

The *Commission*

1 October 2002