



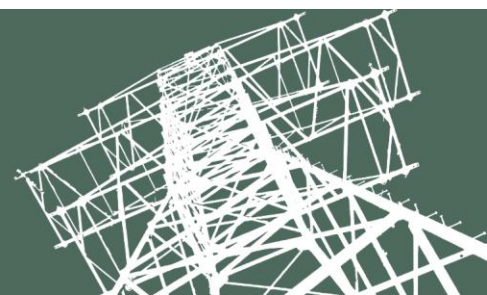
Government of Western Australia
Department of Finance
Public Utilities Office

Electricity Industry Exemption Order 2005 and Energy Coordination Exemption Order 2009

Amendments to electricity and gas on-selling licence exemptions

Consultation Paper

Department of Finance | Public Utilities Office
April 2016



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Abbreviations

Term	Definition
AER	Australian Energy Regulator
Authority	Economic Regulation Authority
Caravan Park Order	<i>Electricity Industry (Caravan Park Operators) Exemption Order 2005</i>
Electricity Act	<i>Electricity Industry Act 2004</i>
Electricity Exemption Order	<i>Electricity Industry Exemption Order 2005</i>
Gas Act	<i>Energy Coordination Act 1994</i>
Gas Exemption Order	<i>Energy Coordination Exemption Order 2009</i>
Horizon Power By-laws	<i>Energy Operators (Regional Power Corporation) (Charges) By-laws 2006</i>
Minister	Minister for Energy
Public Utilities Office	Department of Finance, Public Utilities Office
Synergy By-laws	<i>Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006</i>

1. Introduction

1.1 Purpose of consultation paper

The purpose of this Consultation Paper is to seek views from interested parties on proposals relating to licence exemptions for the residential and commercial on-selling of electricity and gas. These proposals are outlined below and in more detail in Part 4 of this Consultation Paper.

The Department of Finance, Public Utilities Office (**Public Utilities Office**) proposes to recommend to the Minister for Energy (**Minister**) that the *Electricity Industry Exemption Order 2005* (**Electricity Exemption Order**) and *Energy Coordination Exemption Order 2009* (**Gas Exemption Order**) are amended to:

- expand the scope of electricity and gas on-selling licence exemptions to allow a third party to manage an on-seller's embedded network and supply customers within the network on behalf of the on-seller;
- grant a gas trading licence exemption for the on-selling of gas on commercial premises;
- require commercial electricity and gas on-sellers and residential gas on-sellers to provide billing information to their customers;¹ and
- amend the definition of 'commercial premises' in the Electricity Exemption Order and Gas Exemption Order to ensure it adequately reflects the different types of premises that are not used for residential purposes.

When the submission period has closed and the Public Utilities Office has considered any submissions received, it will make a recommendation to the Minister on whether or not a request for amendments to the electricity and gas on-selling licence exemptions should be submitted for granting by the Governor.

Work program timetable

Activity	Date
Publish Consultation Paper	April 2016
Review submissions on Consultation Paper	May 2016
Seek ministerial and Governor endorsement of licence exemptions (if required)	May/June 2016

1.2 Invitation for submissions

The Public Utilities Office invites submissions on the recommendations outlined in Part 4 of this Consultation Paper by **5.00 pm (WST), Wednesday, 25 May 2016**. Electronic submissions are preferred and should be emailed to: PUOSubmissions@finance.wa.gov.au.

¹ Residential electricity on-sellers are already required to provide billing information to their customers

Alternatively, printed submissions may be posted to:

Mr Alex Kroon
A/Project Leader
Markets and Regulation Division
Public Utilities Office, Department of Finance
Locked Bag 11
Cloisters Square WA 6850

Please indicate on the covering page of your submission if you wish part or all of your submission to be treated as confidential. Unless otherwise requested, submissions will be made available at www.finance.wa.gov.au/publicutilitiesoffice.

Requests for information relating to this work will be treated in accordance with the *Freedom of Information Act 1992* (WA) and Department of Finance processes (please see <http://www.finance.wa.gov.au> for further information).

Information on this Consultation Paper, or the licence exemption process, can be obtained from Alex Kroon, A/Project Leader, Public Utilities Office on (08) 6551 4686 or at alexander.kroon@finance.wa.gov.au.

2. Current electricity licensing framework

2.1 Licensing

Section 7 of the *Electricity Industry Act 2004* (**Electricity Act**) requires that:

1. A person must not construct or operate generating works except under the authority of a generation licence or an integrated regional licence.
2. A person must not construct or operate a transmission system² except under the authority of a transmission licence or an integrated regional licence.
3. A person must not construct or operate a distribution system³ except under the authority of a distribution licence or an integrated regional licence.
4. A person must not sell electricity to customers except under the authority of a retail licence or an integrated regional licence.

2.2 Licence exemptions

Under section 8 of the Electricity Act, the Governor can grant licence exemptions. Current electricity licence exemptions made in accordance with section 8(5) of the Electricity Act are contained in the Exemption Order and *Electricity Industry (Caravan Park Operators) Order 2005* (**Caravan Park Order**).

Under section 8 of the Electricity Act, the Governor must not make a licence exemption order (or amend a licence exemption order) unless he or she is satisfied that it would not be contrary to the public interest to do so.

Without limiting the other matters that may be taken into account, matters that are to be taken into account by the Governor in determining whether the making of the order would not be contrary to the public interest are:

1. environmental considerations;
2. social welfare and equity considerations, including community service obligations;
3. economic and regional development, including employment and investment growth;
4. the interests of electricity customers generally or of a class of electricity customers;
5. 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;
6. the importance of competition in electricity industry markets;
7. the policy objectives of government in relation to the supply of electricity; and
8. any other matter that he or she considers relevant.

When preparing a submission to this Consultation Paper, respondents are encouraged to consider these public interest factors.

² The Electricity Act defines *transmission system* as apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

³ The Electricity Act defines *distribution system* as apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

2.3 Residential and commercial electricity on-selling

In commercial and residential on-selling arrangements, the on-seller purchases electricity from a licensed retailer at a master meter and on-sells the electricity under a licence exemption to consumers. These consumers sit behind the master meter and are supplied through sub-meters in an embedded network controlled by the on-seller. In this situation, the commercial or residential tenant does not have a direct contractual or billing relationship with a licensed retailer (such as Synergy).

2.3.1 Residential electricity on-selling exemptions

Residential electricity on-selling typically occurs in retirement villages and strata title arrangements (it also occurs in caravan parks in accordance with the licence exemptions in the Caravan Park Order).

Under clause 5 of the Exemption Order, a person (the on-seller) is exempt from the requirement to hold a transmission, distribution or retail licence if the electricity supplied is consumed on residential premises under the control or management of the on-seller.

The on-seller has 'control or management' of the residential premises if the on-seller is:

1. the owner of the premises; or
2. in the case of the premises on land to which a strata scheme relates, the strata company; or
3. in the case of premises in a retirement village, the administering body of the retirement village.

Clause 6 of the Exemption Order attaches conditions to the licence exemptions in clause 5. Those conditions are:

1. If the electricity supplied to the premises is supplied by Horizon Power or Synergy, the on-seller is not allowed to charge his or her tenants more than the per unit consumption charge in Horizon Power or Synergy's regulated residential electricity retail tariff respectively.⁴
2. If electricity supplied to the premises is generated using generating works owned or operated by the on-seller, any charge for the electricity must not exceed the amount necessary for the on-seller to recover the costs of generation.
3. Any fees or charges imposed by the on-seller for 'electricity services'⁵ must not, in a licence area in which Horizon Power or Synergy sells electricity to customers, exceed the daily fixed supply charge component of Horizon Power or Synergy's regulated residential tariff respectively.
4. The on-seller must make available, to each resident, information that clearly sets out the quantity of electricity supplied to the resident and the fees and charges payable by the resident (in effect, the resident's bill).

⁴ Horizon Power and Synergy regulated electricity tariffs are prescribed in the *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006* and *Energy Operators (Generation and Retail Corporation) (Charges) By-laws 2006* respectively. These regulated residential tariffs are the A2 tariff and A1 tariff respectively.

⁵ *Electricity services* are defined in clause 6(3) of the Exemption Order and include the maintenance of the on-seller's electricity system, meter readings and the preparation and issuing of bills.

2.3.2 Commercial electricity on-selling exemptions

Commercial on-selling typically occurs in properties such as shopping centres, universities, airports, ports and factories.

Under clause 4 of the Exemption Order, a person (the on-seller) is exempt from the requirement to hold a transmission, distribution or retail licence if the electricity supplied is consumed on commercial premises under the control or management of the on-seller.

The on-seller has 'control or management' of the commercial premises if the on-seller is:

1. the owner of the premises; or
2. in the case of the premises on land to which a strata scheme relates, the strata company; or
3. in the case of leased premises part of which is sublet, the sub-lessor.

The licence exemptions in clause 4 are unconditional (i.e. there are no conditions attached to them).

2.4 National licence exemption framework

Under the National Energy Retail Law, the Australian Energy Regulator (**AER**) grants distribution and retail licence exemptions for the on-supply of electricity and gas (the AER grants licence exemptions to supply 'energy', which incorporates both electricity and gas).⁶

As a comparison to Western Australia, the AER provides licence exemptions⁷ to persons selling electricity to commercial or residential customers within the limits of a site they own, occupy or operate (similar to the Electricity Exemption Order's residential and commercial on-selling licence exemptions, detailed above).

However, the AER also provides licence exemptions to persons selling energy in on-selling arrangements where the person does not own, occupy or operate the site (similar to the proposed changes to the licence exemptions outlined in this Consultation Paper).

⁶ This is with the exception of Victoria, which has its own licence exemption framework.

⁷ The AER's classes of licence exemption can be viewed on its website: <http://www.aer.gov.au/node/9804>

3. Current gas licensing framework

3.1 Licensing

Section 11G of the *Energy Coordination Act 1994 (Gas Act)* requires that a person must not in a supply area or part of a supply area:

1. construct, alter or operate a distribution system⁸, or transport gas through a distribution system, except under the authority of a gas distribution licence; or
2. sell gas transported through a distribution system to small-use customers⁹ except under the authority of a gas trading licence.

3.2 Licence exemptions

Under section 11H of the Gas Act, the Governor can grant licence exemptions. The current gas licence exemptions are contained in the Gas Exemption Order.

Under section 11H of the Gas Act, the Governor must not make a licence exemption order (or amend a licence exemption order) unless he or she is satisfied that it would not be contrary to the public interest to do so.

Without limiting the other matters that may be taken into account, matters that are to be taken into account by the Governor in determining whether the making of the order would not be contrary to the public interest are:

1. environmental considerations;
2. social welfare and equity considerations, including community service obligations;
3. economic and regional development, including employment and investment growth;
4. the interests of gas customers generally or of a class of gas customers;
5. 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;
6. the importance of competition in gas industry markets;
7. the policy objectives of government in relation to the supply of gas; and
8. any other matter that he or she considers relevant.

When preparing a submission to this Consultation Paper, respondents are encouraged to consider these public interest factors.

3.3 Residential and commercial gas on-selling

3.3.1 Residential gas on-selling exemptions

As with electricity, in residential gas on-selling arrangements the on-seller purchases gas from a licensed retailer at a master meter and on-sells the gas under a licence exemption to consumers.

These consumers sit behind the master meter and are supplied through sub-meters that are in an embedded network controlled by the on-seller. In this situation,

⁸ The Gas Act defines *distribution system* as '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...and any associated apparatus, facilities, structures, plant, or equipment'.

⁹ The Gas Act defines *small-use customer* as 'a customer whose consumption of gas is less than one terajoule per year'.

the residential tenant does not have a direct contractual or billing relationship with a licensed retailer (such as Alinta Energy or Kleenheat Gas).

The Gas Exemption Order includes distribution and trading licence exemptions for residential gas on-sellers. The trading licence exemption is subject to the condition that the on-seller is not allowed to recover more than his or her gas supply costs from the customer. Unlike the retail licence exemption for residential electricity on-sellers, the trading licence exemption for residential gas on-sellers is not subject to a condition that the on-seller provides its customers with billing information.

3.3.2 Commercial gas on-selling exemptions

Like electricity on-selling, commercial gas on-selling typically occurs in properties such as shopping centres, universities, airports, ports and factories. While there is a distribution licence exemption for commercial gas on-sellers, they do not have a trading licence exemption. This is considered an oversight, and to ensure consistency with electricity, it is recommended that a gas trading licence exemption is introduced for commercial gas on-sellers. More information on this recommendation is in section 4.2 of this Consultation Paper.

4. Recommendations for comment

4.1 Amendments to electricity and gas on-selling exemptions

4.1.1 Third parties providing residential and commercial on-seller services

The Public Utilities Office has received an application from an industry participant requesting changes to expand the scope of the residential and commercial electricity on-selling licence exemptions (transmission, distribution and retail) to allow a third party to manage the on-seller's embedded network and supply customers within the network on behalf of the on-seller (usually the on-seller's tenants).

The changes to allow a third party to operate an embedded network on behalf of the on-seller will provide several benefits, including:

- removing a barrier to entry for these businesses (as they will not have to obtain licences, which incur substantial compliance costs);
- enabling on-sellers to engage third parties who can potentially provide electricity services to customers more efficiently and effectively (on-sellers often have little experience in providing electricity services to customers and this activity is usually ancillary to their core business);
- facilitating the introduction of alternative business models for supplying electricity in on-selling arrangements in Western Australia and increasing the choice for electricity on-sellers in how they manage their embedded networks; and
- achieving greater consistency with the relevant licence exemption arrangements administered by the AER in the national electricity and gas markets.

Consequently, the Public Utilities Office supports the application and recommends that the residential and commercial electricity on-selling licence exemptions are amended to allow a third party to manage the on-seller's embedded network and supply customers within the network on behalf of the on-seller.

Due to the potential benefits of these changes and to provide consistency with electricity, the Public Utilities Office also recommends that the same changes are made to gas on-selling licence exemptions to allow third parties to provide gas supply services on behalf of an on-seller.

4.1.2 Electricity and gas on-sellers to provide billing information

The only retail licence exemptions for on-selling that include a condition requiring the on-seller to provide its customers with billing information are those relating to electricity on-selling in residential premises and caravan parks (the on-seller and caravan park operator are required to provide the customer with billing information that clearly sets out the quantity and price of electricity supplied to the customer, and the fees and charges payable by the customer for the provision of electricity services).

It is recommended that the same condition is added to the trading licence exemptions for the residential and commercial on-selling of gas and the retail licence exemption for the commercial on-selling of electricity. This will ensure all customers in on-selling arrangements receive, as a minimum, basic information on how their electricity and gas charges have been calculated.

This is not considered an onerous requirement for on-sellers, particularly when weighed against the potential benefits to consumers. A consumer needs this information to be able to validate the amount they are being asked to pay. The on-seller will also already have this information to calculate the customer's bill, so it is a matter of passing it to the customer.

While it is likely that a majority of on-sellers are providing their customers with billing information, the proposed new licence exemption condition is to ensure all customers in on-selling arrangements have a right to this information and receive it (the Public Utilities Office has anecdotal evidence from customers that there have been instances where an on-seller has not provided them with basic billing information).

4.1.3 Definition of 'commercial premises'

The Public Utilities Office considers that an amendment to the definition of 'commercial premises' in the Electricity Exemption Order is necessary to ensure it reflects the different types of premises that are not used for residential purposes. The change will also ensure consistency with the *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006 (Synergy By-laws)* and *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006 (Horizon Power By-laws)*, as referenced in clause 6 of the Electricity Exemption Order.

The Electricity Exemption Order's definition of 'commercial premises' is:

commercial premises means premises or any part of premises used, or intended to be used, for commercial or industrial purposes

Under clause 5 of the Horizon Power By-laws and Synergy By-laws a consumer is entitled to be supplied on the basis of a residential electricity retail tariff only if:

- a. *the premises supplied consist of a dwelling; and*
- b. *the supply is not used for any industrial, commercial, business, or general purpose.*

It is proposed that the definition of commercial premises in the Electricity Exemption Order is expanded to include premises used for *business or general purposes* (to cover all premises that are not residential). This change will ensure that the definition has wider application to include premises used by government, charities or not-for-profit organisations.

The Electricity Exemption Order's amended definition of 'commercial premises' is likely to be:

commercial premises means premises or any part of premises used, or intended to be used, for commercial, industrial, business, or general purposes

For consistency, it is also recommended that the Gas Exemption Order's definition of 'commercial premises' is amended in the same way (it currently has the same limitations as the Electricity Exemption Order).

4.2 New gas trading licence exemption

Currently, there is no gas trading licence exemption for the commercial on-selling of gas. This is considered an oversight, as there are licence exemptions for all other on-selling arrangements in electricity and gas where the on-seller has control or management of the premises; that is, the residential and commercial on-selling of electricity and the residential on-selling of gas.

There is also a gas distribution licence exemption to allow an on-seller to construct and operate an embedded gas network on commercial premises (but no gas trading licence exemption to allow the on-seller to sell the gas transported through the distribution system).

To correct this inconsistency and ensure on-sellers of gas on commercial premises do not need to obtain a gas trading licence from the Authority to continue to supply gas, it is recommended that a new gas trading licence exemption is granted for the on-selling of gas on commercial premises.

The on-seller's costs to comply with a licence would outweigh the benefits of the on-seller being licensed. The on-selling of gas is also usually ancillary to the main business purpose of the on-seller. There is also no regulatory or market failure that would justify requiring on-sellers of gas on commercial premises to obtain a licence. The licensing requirement would act as a barrier to entry for gas on-sellers and potentially reduce a customer's ability to access gas on an embedded network (when it is likely to be their only source of gas, as they are not able to obtain gas from the competitive retail market via the main network).

The amendments recommended to the gas trading licence exemption for residential on-selling, allowing a third party to provide on-selling services and requiring an on-seller to provide customers with billing information, will also be included in this new exemption.

4.3 Summary of recommendations for comment

The Public Utilities Office invites comments on the amendments to the Electricity Exemption Order and Gas Exemption Order outlined in the table below.

Recommendations for comment

It is recommended that:

1. Clause 4 of the Electricity Exemption Order and clause 5 of the Gas Exemption Order are amended to exempt a third party providing electricity or gas supply services on behalf of a commercial on-seller from the requirement to hold a transmission/distribution/retail licence (electricity), or distribution licence (gas).
2. Clause 5 of the Electricity Exemption Order and clause 4 of the Gas Exemption Order are amended to exempt a third party providing electricity or gas supply services respectively on behalf of a residential on-seller from the requirement to hold a transmission/distribution/retail licence (electricity), or distribution/trading licence (gas).
3. The definition of 'commercial premises' in the Electricity Exemption Order and Gas Exemption Order is amended to include premises used for business or general purposes.
4. A new gas trading licence exemption is granted to allow a person to on-sell gas on commercial premises that it has control or management of (it will also allow a third party to operate under this licence exemption on behalf of the on-seller).
5. All existing electricity and gas on-selling licence exemptions (and the proposed new gas licence exemption in recommendation 4) include a condition that the on-seller must provide its customer with billing information, which must include information that clearly sets out the quantity and price of electricity/gas supplied to the customer and the fees and charges payable by the customer for the provision of electricity/gas services.¹⁰

¹⁰ This recommendation applies where the on-selling licence exemption does not already include such a condition (for example, the residential electricity on-selling licence exemption already has this condition).