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23 September 2019

Kate Daley
General Manager Retail & Energy Procurement
Enwave Australia
Level 22, 135 King Street
Sydney, NSW, 2000

By email: [REDACTED]

Dear Ms Daley

Enwave Tonsley Pty Ltd — application for an individual exemption

I refer to your application, accepted on 21 August 2019, for an individual exemption under the National Energy Retail Law (Retail Law) for Enwave Tonsley Pty Ltd (**Enwave Tonsley**) / ABN 56 623 288 175 to sell gas through an embedded network at **Tonsley Innovation District**, 1284 South Road, Clovelly Park, South Australia 5042.

Pursuant to the delegation given to me by the Australian Energy Regulator (AER), I have assessed Enwave Tonsley Pty Ltd's application for individual exemption and am satisfied that it complies with r.157(2) of the National Energy Retail Rules and can be exempt from the requirement to hold a retailer authorisation.

I have considered the policy principles relating to exempt selling in s.114 of the Retail Law, being:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers,
- exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right, and
- exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under this Retail Law and Rules.

My decision is guided by the objective of the Retail Law,¹ the exempt seller factors,² the customer related factors,³ and the assessment approach outlined in the AER (Retail) Exempt Selling Guideline.

If Enwave Tonsley decides to change the way it sells gas, it should contact the AER as it may need to apply for an authorisation or another exemption to do so. If Enwave Tonsley decides to sell gas to large commercial customers in future, it should register for an R5 exemption by completing the online form on the [AER website](#). Please be aware that selling energy outside of the scope of your retail exemption may contravene s.88 of the Retail Law and we may take enforcement action or otherwise seek to ensure compliance.

Please note that this exemption is subject to your acceptance of the conditions set out in the Instrument of Exemption. Enwave Tonsley must advise, in writing, by **Monday 21 October 2019** whether it accepts these conditions.

If you have any further queries, or would like to discuss this further, please contact Susan Faulbaum on (08) 8213 3463.

Yours sincerely



Moston Neck
A/g General Manager, Consumers and Markets

¹ The national energy retail objective is to 'promote efficient investment in and efficient operation and use of energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy' (s. 13, National Energy Retail Law).

² s. 1 15, Retail Law.

³ s. 1 16, Retail Law.

Schedule 1: Instrument of Exemption

INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAILER AUTHORISATION

DATE OF ISSUE: 23 September 2019

FORM OF ENERGY: Gas

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator (AER) decided, on 23 September 2019, to grant Enwave Tonsley Pty Ltd / ABN 56 623 288 175 an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to the conditions set out below. This exemption applies to the sale of gas to premises at Tonsley Innovation District, 1284 South Road, Clovelly Park, South Australia, 5042 (as defined in the map included with Enwave Tonsley Pty Ltd's application of 21 August 2019).

Condition 1 – Obligation to supply

- 1 An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except:
 - a. in accordance with relevant disconnection provisions and
 - b. where the exempt customer's premises have been disconnected by the exempt person for a reason other than failure to pay a bill and the matter leading to the disconnection has not been rectified. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

Condition 2 - Information provision

Note: Conditions 2(1) (f), (g) and (i) do not apply to commercial customers of the exempt person.

- 1 The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency/agreement of the following:
 - a. the legal name, trading name (if relevant) and contact details of the exempt seller
 - b. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
 - c. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer
 - d. the exempt customer's rights in relation to dispute resolution including:
 - i. any right the exempt customer has to access the energy ombudsman scheme (if applicable), including to lodge a complaint or for free independent information and advice, or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located and

- ii. the exempt person's procedures for handling complaints and disputes.
 - e. the conditions applicable to the exemption that the exempt person is operating under
 - f. the availability of relevant government or non-government energy rebates, concessions and relief schemes
 - g. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
 - h. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
 - i. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
 - j. contact numbers in the event of a gas or electricity fault or emergency.
- 2 The exempt person must provide the information set out in paragraph 1 of this condition at any time on request by the exempt customer or the AER.
 - 3 The exempt person must provide the information set out in paragraph 1 of this condition to existing exempt customers as soon as practicable but no later than three months after the Retail Law commences in the relevant state or territory.

Condition 3 - Billing and payment arrangements

Note: Condition 3(3)(n) does not apply to commercial customers of the exempt person.

- 1 An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
- 2 An exempt person must offer at least two payment methods to an exempt customer. However, if an exempt person offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
 - a. in person
 - b. by telephone
 - c. by mail
 - d. by direct deposit into a bank account.
- 3 An exempt person must include the following particulars in a bill for an exempt customer:
 - a. the legal name, trading name (if relevant) and contact details of the exempt seller
 - b. the name of the exempt customer
 - c. the address of the exempt customer's premises
 - d. date that the account was issued
 - e. the identifier of the meter for the exempt customer's premises

- f. the pay-by date for the bill
- g. date of the current meter reading or estimate, as applicable
- h. the dates to which the meter reading or estimate applies (billing period)
- i. current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill
- j. previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill
- k. the amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site)
- l. tariffs, fees and charges applicable to the exempt customer
- m. the basis on which tariffs, fees and charges are calculated. This includes:
 - i. the usage rate specified in cents per kilowatt hour (c/kWh) or cents per megajoules (c/MJ)
 - ii. the daily supply charge in cents per day (c/day) (if charged)
 - iii. the number of days in the billing cycle
- n. any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement
- o. details of the available payment methods
- p. a telephone number for account inquiries and complaints.

Condition 4 - Estimation as basis for bills

- 1 An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
- 2 An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
- 3 An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
- 4 Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person or

- b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
- 5 If a customer's bill is based on an estimation this must be clearly stated on the exempt customer's bill.

Condition 5 - Pay-by date

- 1 The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

Condition 6 - Receipts

- 1 An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
 - a. direct debit or
 - b. credit card over the phone and the customer is provided with a receipt number.
- 2 An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 - Pricing

- 1 An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.⁴
- 2 An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable and no later than the exempt customer's next bill.
- 3 An exempt person must not impose any charge on an exempt customer that is not charged by the relevant local area retailer for new connections under a standard retail contract. A 'charge' includes, but is not limited to, account establishment fees, late payment fees, debt collection fees, disconnection and reconnection charges and security deposits.⁵ The amount of any allowable charge must not be greater than that charged under the relevant local area retailer's standard retail contract.

Condition 8 – Undercharging and overcharging

- 1 Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:

⁴ The standing offer price includes the supply price and the usage price. Exempt sellers must ensure that the price they charge for each of these parts does not exceed the price charged for the equivalent part of the standing offer.

⁵ The fees and charges allowable under a standard retail contract are governed by Division 6 of the National Energy Retail Rules (which sets out the requirements for charging a security deposit under a standard retail contract) and may also be governed by jurisdictional legislation.

- a. where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the exempt customer is notified of the undercharging
 - b. the exempt person cannot charge interest on the undercharged amount
 - c. the exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
- 2 Where an exempt customer has been overcharged, an exempt person must inform the exempt customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
- a. where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days
 - b. where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days
 - c. no interest is payable on the overcharged amount
 - d. where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 - Payment difficulties and disconnection or de-energisation

Note: Condition 9(1) (a) does not apply to commercial customers of the exempt person.

- 1 Where an exempt customer informs the exempt person that they are unable to pay energy bills due to financial difficulty, the exempt person must:
 - a. offer the exempt customer a payment plan (subject to Condition 12) and
 - b. direct the exempt customer to the Australian government energy efficiency website or another information resource with energy efficiency advice and
 - c. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes and
 - d. not charge the exempt customer a late payment fee and
 - e. not charge the exempt customer a security deposit.
- 2 Subject to Condition 10, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
 - a. the exempt customer has requested disconnection or

- b. continuity of supply to the premises would be unsafe or
 - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises or
 - d. the exempt customer has not paid a bill by the pay-by date, and has not agreed to a payment plan, or having agreed to a payment plan has failed to adhere to the plan and:
 - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and, in the case of residential exempt customers, has offered the exempt customer more flexible payment terms to pay any amount outstanding and has restated the forms of assistance available if the non-payment is due to financial difficulty and
 - ii. following non-payment by the date specified in the reminder notice, or, in the case of residential customers, the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice and
 - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay and
 - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
- 3 A reminder warning issued pursuant to condition 9(2)(d)(i) must:
- a. state the date of its issue and
 - b. state the date on which the reminder notice period ends and
 - c. include details of the exempt seller's telephone number for complaints and disputes.
- 4 A disconnection warning notice issued pursuant to condition 9(2)(d)(ii) must:
- a. state the date of its issue and
 - b. state the date on which the disconnection warning period ends and
 - c. inform the exempt customer of applicable re-connection procedures and (if applicable) that a charge will be imposed for reconnection and
 - d. include details (where applicable) of the existence and operation of the energy ombudsman, including contact details and
 - e. include contact details for the exempt seller.
- 5 Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.

- 6 This condition does not apply where state or territory legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord, body corporate or similar.
- 7 This condition does not apply to interruptions under conditions 18 and 19.

Condition 10 - When disconnection or de-energisation is prohibited

Note: Condition 10 (1)(a) and (b) do not apply to commercial customers of the exempt person.

- 1 An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government or non-government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made or
 - c. the exempt customer has made a complaint directly related to the proposed reason for disconnection or de-energisation to the exempt person, the energy ombudsman or another relevant external dispute resolution body and the complaint remains unresolved or
 - d. the disconnection or de-energisation would occur on:
 - i. a business day before 8am or after 3pm or
 - ii. a Friday or the day before a public holiday or
 - iii. a weekend or a public holiday or
 - iv. the days between 20 December and 31 December (inclusive) in any year.
- 2 For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
- 3 This condition does not apply where the exempt customer has requested disconnection.
- 4 This condition does not apply where continuity of supply to the premises would be unsafe.
- 5 This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.

Condition 11 - Reconnection or re-energisation

1. Where an exempt customer is disconnected in accordance with conditions 9 and 10 and the customer makes a request for reconnection, the exempt person must reconnect the premises as soon as practicable after a request for reconnection is made. A request for

reconnection may be made ten business days after disconnection, or as soon as the matter that led to the disconnection is rectified, and

- a. any charges for reconnection are paid and
 - b. if the exempt customer still has outstanding amounts owed under the exempt customer's energy account, the customer agrees to enter into a payment plan with the exempt seller.^{6 7}
2. Subject to condition 11(1), the exempt person must reconnect the premises (or, where required, arrange with the distributor to reconnect the premises) as soon as practicable, and no later than two business days from when the request was made.
 3. Subject to condition 11(1), the exempt person cannot refuse to supply an exempt customer on the grounds that they owe outstanding amounts on their energy account.

Condition 12 - Payment plans

Note: Condition 12(1) does not apply to commercial customers of the exempt person.

1. An exempt person must offer flexible energy payment options to an exempt customer who has identified themselves as being in financial difficulty. Flexible payment options may include arrangements for a payment plan.
2. In establishing a payment plan the exempt seller must have regard to:
 - a. the exempt customer's capacity to pay and
 - b. any outstanding amounts owed by the exempt customer and
 - c. the exempt customer's expected energy consumption needs over the following 12 month period or the duration of their tenancy/residency/agreement if the tenancy/residency/agreement is less than 12 months.
3. An exempt seller who offers a payment plan to an exempt customer under this condition must inform the exempt customer of:
 - a. the duration of the plan and
 - b. the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid.
4. This condition does not apply where the exempt customer has:
 - a. had two payment plans cancelled by the exempt person in the previous 12 months due to non-payment or
 - b. been convicted of an offence involving illegal use of energy in the previous two years.

⁶ The requirement for exempt customers to wait 10 days before requesting reconnection does not preclude an exempt seller from reconnecting prior to this date where it is directed to do so under jurisdictional legislation.

⁷ The AER recommends that exempt sellers consider the AER Sustainable Payment Plans Framework when agreeing a payment plan with an exempt customer. The framework can be found at <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

Condition 13 - Concessions and rebates

Note: Condition 13 does not apply to commercial customers of the exempt person.

- 1 Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2 If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the eligible exempt customer, then, assuming there is no legal impediment, the exempt person must make that claim and, if successful, must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 14 - Choice of retailer

- 1 Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
 - a. requiring the exempt customer to waive their ability to choose a retailer
 - b. unreasonably hindering their efforts to find another retailer or
 - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 15 - Contact details

- 1 An exempt person must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 16 - Dispute resolution

- 1 An exempt person must develop and make a set of procedures detailing the exempt person's procedures for handling complaints and disputes, and those procedures must be provided to exempt customers in accordance with condition 2(1)(d)(i).
- 2 The procedures must be consistent with the Australian Standard *AS/NZS 10002:2014 Guidelines for complaint management in organizations* as amended and updated from time to time.
- 3 In the event of a complaint or dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:
 - a. deal with the complaint or dispute in accordance with the exempt person's procedures for handling complaints and disputes and
 - b. make reasonable endeavours to resolve the dispute and
 - c. advise the exempt customer:
 - i. of any right the exempt customer has to access an energy ombudsman (if applicable), including to lodge a complaint or for free independent information

and advice, or any other external dispute resolution body in the state or territory where the exempt customer is located, and

- ii. of the telephone number and other contact details of the energy ombudsman (if applicable).

Condition 17 – Member of energy ombudsman scheme

- 1 An exempt person must, if permitted by an energy ombudsman scheme:
 - a. be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it sells energy to exempt customers and
 - b. comply with the requirements of that scheme.

Condition 18 – Planned interruptions to supply

- 1 For planned interruptions, the exempt seller must notify each affected exempt customer at least two business days before the date of the interruption.
- 2 The notification must:
 - a. specify the expected date, time and duration of the interruption and
 - b. include a telephone number for enquiries (the charge for which is no more than the cost of a local call) and
 - c. include a statement that any enquiries regarding planned interruptions are to be directed to the exempt seller.
- 3 The exempt seller must use its best endeavours to restore the exempt customer's supply as soon as possible.

Condition 19 – Unplanned interruptions to supply

1. In the case of an unplanned interruption, the exempt seller must:
 - a. within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available and
 - b. if providing a telephone response that is automated, provide options for exempt customers who call the service to be directly connected to a telephone operator if required and
 - c. use its best endeavours to restore supply to affected exempt customers as soon as possible.

Condition 20 - Life support customers

Note: Condition 20 does not apply to commercial customers of the exempt person.

- 1 Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:

- a. advise the person whose embedded distribution network the sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment and
 - b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment and
 - c. provide the exempt person's authorised retailer and distributor with any relevant information about the premises for the purposes of updating their records and registers.
- 2 An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

Condition 22 – Termination of energy supply agreement

- 1 An energy supply agreement between the exempt person and an exempt customer will terminate:
 - a. on a date agreed by the exempt person and exempt customer or
 - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice or
 - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied or
 - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person or
 - e. when a different exempt customer starts receiving customer retail services for the premises or
 - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
- 2 Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 23 - Maintaining records

- 1 An exempt person must maintain records of the following for each of its exempt customers:
 - a. the name of the exempt customer
 - b. the address of the exempt customer's premises
 - c. the identifier of the meter for the exempt customer's premises (if applicable)
 - d. the date that the customer account was created
 - e. copies of any bills issued for the previous 12 months
 - f. the date of the most recent meter read for the customer (if applicable)

- g. the basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.