

24 February 2006

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**BY FAX AND MAIL**

**Attn: Mr. Leow Leng Chong**

Dear Sir,

**COMMENTS AND FEEDBACK ON THE PROPOSED AMENDMENTS TO GAS ACT (CAP. 116A)**

We refer to the consultation paper entitled "Amendments to Gas Act (Cap 116A)" dated 13 February 2006.

Although PowerSeraya supports the liberalisation of the Singapore gas industry, we do, however, have a fiduciary duty to our shareholders to ensure that PowerSeraya is not in a worse position as a result of any migration from the Onshore Transportation Agreement (the "OTA") between PowerSeraya, PowerGas and Gas Supply Pte to the Gas Network Code. In our letter of 18<sup>th</sup> July 2005 to the Electricity Market Authority (the "Authority"), we provided an outline of the differences between the OTA and the Gas Network Code and expressed our willingness to work towards an amicable solution with the Authority on the issues outline therein.

We were surprised by the proposed amendments to the Gas Act (the "Act"). In particular, we are very concerned that the proposed changes to Section 63D will render our OTA illegal in Singapore. There is, furthermore, no reasonable grace period stipulated in the Act to allow contractual parties to re-negotiate terms so as to conform to the requirements of the Act.

In our view, the proposed changes to invalidate existing contracts will result in regulatory uncertainty which may weaken investor confidence in Singapore's pro-business regulatory regime. It is important that the Authority allow parties to contract based on commercial positions that define agreed levels of risk and reward rather than forcing participants to accept allocation of risk and reward which may prefer one party above another. Foreign investors are also keen to ensure that their contractual relationships are recognised by the government and that their businesses will not be affected by changes in law.

The impact of these amendments on PowerSeraya will be that, with the stroke of a pen, the commercial terms under the OTA would be invalidated and replaced by an uncertain regime in which the terms and conditions are unclear. Although we would always do our best to prevent such an event, we are concerned that the uncertainty resulting

from an abrupt transition may poses a danger to supply of fuel to our plant and, consequently, our supply of electricity to the public.

We would therefore urge the Authority to consider a transition period of at least 24 months for all existing contracts affected by the new provisions. The parties to these contracts can, during this period, negotiate a gas transportation arrangement which is in compliance with the provisions of the Act. This period is necessary for PowerSeraya to observe and understand the market and will allow the parties sufficient time to fully negotiate their complex positions. It may be necessary for the Authority to facilitate some of these discussions and to consider granting fair compensation for parties that will incur significant cost as a result of stranded assets cause by the legislation.

The second principle that we seek to preserve is the right of recourse to appeal. While we recognise and agree that the Authority must have sufficient authority to make rules governing the market, the Authority's interest may not be aligned with the interest of market participants. In that regard, to say that the Authority's interest is always good for the public at large may not be the correct view of the benefits to the public resulting from a freely competitive market and the freedom of market participants allocating risk in accordance with the perceived rewards. We therefore stress the need to retain the right of appeal and not to presuppose that the Authority will always be able to decide what is in the interest of the greater good. The right of appeal to the Minister must be retained, where possible, but even more importantly the right of appeal to our courts will ensure fairness and equity in all dealings in respect of the new gas market. The role of the court as the independent arbiter of disputes is important to assure foreign investors that any decision is fully independent of the interest of the government.

Please find enclosed PowerSeraya's detailed comments and feedback on the proposed amendments to the Gas Act in Appendix 1 for your consideration.

Yours faithfully,

**SGD. NEIL GARRY MCGREGOR**  
NEIL GARRY MCGREGOR  
MANAGING DIRECTOR  
POWERSERAYA LIMITED

**POWERSERAYA’S COMMENTS ON THE PROPOSED AMENDMENTS TO THE GAS ACT**

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<b>Specific Provision(s) of Proposed Amendments</b>	<b>Revised Amendments</b>	<b>Detailed Reasons For Revised Amendments</b>
<p><u>Amendment of Section 2</u></p> <p>(g) by deleting the words “gas reception facilities,” in the definition of “gas transmission pipeline”,</p>	<p>Nil</p>	<p>We would like to seek clarification on why the words “gas reception facilities” are removed from the definition of “gas transmission pipeline”.</p> <p>If PowerGas is not required to own all the gas reception facilities in Singapore, EMA should ensure that there is legislation to impose on the owners of the gas reception facilities to allow open and non-discriminatory access. Otherwise, it would be a barrier for achieving open and non-discriminatory access to the onshore pipelines.</p>
<p><u>Amendment of Section 2</u></p> <p>(k) by deleting the definition of “shipping” and substituting the following definition:</p> <p>“shipping”, in relation to gas, means contracting with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline or a gas pipeline network operated by the gas transporter and paying the gas transporter for conveyance of the gas, and “ship” shall be construed accordingly;</p>	<p>“shipping”, in relation to gas, means contracting with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline or a gas pipeline network operated by the gas transporter and paying the gas transporter <b><u>directly or indirectly</u></b> for conveyance of the gas, and “ship” shall be construed accordingly;</p>	<p>A Shipper can pay directly or indirectly to the gas transporter for gas that it has to deliver to its end customer’s premises.</p> <p>The presumption that the person who pays to the gas transporter for the conveyance of gas is performing the act of “shipping” would affect the resolution of issues between commercial entities relating to contract entered into prior to the operation of the Act. We would prefer that the amendments not to be made or, if necessary, state clearly that payment to transporter need not be in the form of a direct payment to the gas transporter.</p>

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<p><u>Amendment of section 4</u></p> <p><b>4.</b> Section 4 of the Gas Act is amended —</p> <p>(c) by inserting, immediately after subsection (6), the following subsection:</p> <p>“(6A) The Authority shall be entitled without payment to keep any document or information, or any copy or extract thereof, furnished to it under subsection (1) or obtained under subsection (6).”</p>	<p>“(6A) The Authority shall be entitled, <b><u>where reasonable</u></b>, without payment to keep any document or information, or any copy or extract thereof, furnished to it under subsection (1) or obtained under subsection (6).”</p>	<p>The principle that the Authority is exempted from making payment for all information that it requires from its licensee does not seem equitable.</p> <p>The Authority should reasonably be required to pay for any document or information that it requested from the licensee should the provider of the information have to incur significant cost to provide such information to the Authority. In the absence of a cost attached to the information, there is no incentive or disincentive on the Authority to request only for the necessary information.</p>
<p><u>Amendment to section 5</u></p> <p><b>5.</b> Section 5 of the Gas Act is amended —</p> <p>“(b) from disclosing any information or document to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister, or to an Appeal Panel.”.</p>	<p>“(b) from disclosing any information or document to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister, or to an Appeal Panel <b><u>on a confidential basis</u></b>.”.</p>	<p>Amendment to Section 5 of the Gas Act to extend the disclosure of information to agent, consultant, committee or panel acting for or under the direction of the Minister increases the probability of commercially sensitive information being revealed to unintended parties.</p>

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		<p>Information provider shall be informed before the disclosure of confidential information to any appointed personnel, in particularly, the consultants engaged by the Minister. All agent, consultant, committee or panel acting for or under the direction of the Minister shall be bound by the Official Secrecy Act.</p>
<p><u>Amendment of section 6</u></p> <p>6. Section 6 of the Gas Act is amended —</p> <p>(e) by deleting the word “\$500,000” and substituting the words “\$1 million and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction” in subsection (4); and</p>	<p>(e) <del>by deleting the word “\$500,000” and substituting the words “\$1 million and,</del> in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction” in subsection (4); and</p>	<p>We seek explanation on why the EMA made the decision to raise the penalty to a fine not exceeding \$1 million. Otherwise, we request for the re-instatement of the original clause.</p>
<p><u>Amendment to section 7</u></p> <p>(g) by inserting, immediately after subsection (5), the following subsection:</p> <p>“(5A) A gas transporter’s agent’s licence shall not be granted to —</p> <p>(d) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of</p>	<p>(d) any other person, if the grant of such licence may, in the opinion of the Authority,</p>	<p>We do not find it appropriate for the provision to include any reference to the Electricity Act in the</p>

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<p>interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.”.</p> <p>“(6A) A gas shipper’s licence shall not be granted to —</p> <p>(c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.</p> <p>(6B) An onshore receiving facility operator’s licence shall not be granted to any person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest 5 in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.</p> <p>(6C) A town gas producer’s licence shall not be granted to —</p> <p>(a) a person who is the holder of a gas transporter’s licence;</p> <p>(b) a person who is the holder of a gas transporter’s</p>	<p>give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act,<del>the Electricity Act</del> or any licence issued to him under this section.”.</p> <p>(c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act,<del>the Electricity Act</del> or any licence issued to him under this section.</p> <p>(6B) An onshore receiving facility operator’s licence shall not be granted to any person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest 5 in the discharge of any duty imposed on such a person under this Act,<del>the Electricity Act</del> or any licence issued to him under this section.</p>	<p>amendments because the gas and electricity market are governed separately.</p> <p>We do not find it appropriate for the provision to include any reference to the Electricity Act in the amendments because the gas and electricity market are governed separately.</p> <p>We do not find it appropriate for the provision to include any reference to the Electricity Act in the amendments because the gas and electricity market are governed separately.</p>

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<p>agent’s licence; or                      (c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.”.</p>	<p>(c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, <del>the Electricity Act</del> or any licence issued to him under this section.”.</p>	<p>We do not find it appropriate for the provision to include any reference to the Electricity Act in the amendments because the gas and electricity market are governed separately.</p>
<p><u>Amendment to section 9</u></p>	<p>NIL</p>	<p>We would like to understand the why there are no corresponding provisions for the town gas producer’s licence and onshore receiving facility operator’s licence under section 9.</p>
<p><u>Repeal of section 20</u></p>	<p>Reinstate section 20.</p>	<p>All parties should be given the avenue to appeal against the decision of the Authority. This serve as a form of “check-and-balance” on the Authority to avoid any abuse of power.</p>
<p><u>Amendment to section 27</u></p> <p><b>14.</b> Section 27 of the Gas Act is amended —</p> <p>(e) by deleting “Subject to subsection (10),” and inserting immediately after the words “to be carried out” the words “and the decision of the Authority shall be final” in subsection (9);</p> <p>(f) by deleting subsection (10);</p>	<p>Reinstate section 24 subsection (9) and (10).</p>	<p>All parties should be given the avenue to appeal against the decision of the Authority. This serve as a form of “check-and-balance” on the Authority to avoid any abuse of power. Thus, we request for a reinstatement of section 20.</p> <p>Section 24 subsection (9) and (10) to be reinstated to its original text.</p>

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<p><u>Amendment of section 38</u></p> <p><b>18.</b> Section 38 of 5 the Gas Act is amended —                      (a) by inserting, immediately after subsection (6), the following subsections;</p> <p>“(6A) The Authority may, in the absence of any agreement relating to the allocation of gas in any gas pipeline or gas pipeline network located offshore, impose on such persons such arrangements relating to the allocation of gas as it thinks fit by notice in writing.</p> <p>(6B) Any subsequent agreement entered into by such persons relating to the allocation of gas in any gas pipeline or gas pipeline network located offshore shall supersede any arrangement imposed by the Authority in subsection (6A) provided that such agreement shall allow for non-discriminatory access to such gas pipeline or gas pipeline network.”; and</p>	<p>NIL</p>	<p>We would like to seek clarification from the Authority on the intent of this amendment. Preferably, some working examples on how this provision would be applied could be given.</p>
<p><u>New sections 63A to 63E</u></p> <p><b>63A.</b> —(1) The Authority shall issue or approve the initial Gas Network Code establishing and governing, amongst other things —                      (2) The Gas Network Code, including modifications made in accordance with this subsection, may be modified:                      (a) in accordance with the code modification rules of the Gas Network Code;                      and</p>	<p><b>63A.</b> —(1) The Authority shall issue or approve the <del>initial</del> Gas Network Code establishing and governing, amongst other things —</p>	<p>There should be no distinction between an initial Code and a final Code. A Code should not be issue unless it addresses all the significant issues raised by the market participants and any interested parties.</p> <p>Whilst we recognise that the Government needs to have and does in fact hold control over the Gas Act and therefore any codes that can be derived there</p>

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<p><i>(b)</i> by a gas transporter in compliance with directions issued by the Authority.</p>		<p>from, we believe that any changes to the Gas Network Code resulting from government policy changes should be dealt with through a transparent process.</p> <p>The amendment to the Act under Section 63A(2)(b) appears to bypass the code modification rules in the way changes would be implemented. That being the case we suggest some other procedure be referred which will ensure that participants are adequately informed in advance and have some right of appeal over government imposed rule changes.</p>
<p><b>Limitation of actions under Gas Network Code</b></p> <p><b>63C.</b> —(1) If the Gas Network Code include a provision —</p> <p><i>(a)</i> that regulates the manner in which disputes under the Gas Network Code or referred to in the Gas Network Code are to or may be resolved; and</p> <p><i>(b)</i> that restricts recourse to the courts until such time as the dispute resolution process in the Gas Network Code has been exhausted, recourse to the courts shall be limited in the manner prescribed by the Gas Network Code, including a restriction against appeals to a court except in relation to matters of law and jurisdiction.</p>	<p><i>(b)</i> that restricts recourse to the courts until such time as the dispute resolution process in the Gas Network Code has been exhausted, recourse to the courts shall be limited in the manner prescribed by the Gas Network Code, including a restriction against appeals to a court except in relation to matters of law and jurisdiction, to the extent that such relates to requirement for</p>	<p>While we understand the need for the appropriate tribunal to hear disputes, the right of appeal to a court of law is fundamental and should not be derogated in any respect. The language should clearly reflect that the right of appeal remains.</p>

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<p>(2) Nothing in this section is to be read or construed as sanctioning the right of any person to seek injunctive or other relief from the courts in respect of the issue or implementation of the Gas Network Code.</p>	<p>dispute resolution process in the Gas Network Code to be resolved prior to any appeal to a court of law.</p>	
<p><b>Prohibition of terms or conditions in contracts, agreements, inconsistent with Gas Network Code, etc.</b>  <b>63D.</b> —(1) Any term or condition in a contract, agreement, arrangement or document implemented before, on or after the appointed day which provides for the conveyance of gas through the gas pipeline network of a gas transporter whether located onshore or offshore which:</p> <p>(a) prevents or restricts any person from gaining access to the gas pipeline network of the gas transporter whether located onshore or offshore; or                  (b) gives rise to a conflict with the Gas Network Code; or                  (c) excludes the application of the provisions of this Act or the regulations, shall not be lawful, and shall not be or cease to be enforceable.</p> <p>(2) If the Authority is satisfied that any person is a party to any contract, agreement, arrangement or document which contravenes subsection (1), the</p>	<p>We suggest that a grace period of at least 24 months is given before this clause comes into effect.</p>	<p>There will be a need for participants to re-negotiate parts of their onshore or offshore contracts. The invalidation of key terms and conditions relating to certain gas transportation and consumption contracts entered into at arm’s length necessitates a period of renegotiation between the parties to such contract and the exemption of these contracts for the period of negotiation.</p> <p>The severity of imposing a rule such as proposed may mean that contracts would be automatically deem unenforceable as of the date of the legislation and parties are no longer obligated to supply in accordance with the terms thereof. Given that the electricity market is closely aligned with the gas market, at the extreme, we could see an immediate interruption of key services to the public arising from inadvertent misunderstanding due to the imposition of an unclear and undefined new</p>

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<p>Authority may by notice in writing to such person do one or more of the following—</p> <p>(a) direct the person to do or not to do such things as are specified in such direction;</p> <p>(b) direct the person to cease or procure the cessation of conveyance of gas through any gas pipeline or gas pipeline network of a gas transporter;</p> <p>(c) require the payment of a financial penalty of an amount not exceeding 10% of the annual turnover of the person’s gas business, or an amount not exceeding \$1 million, whichever is higher.</p> <p>(3) Any person who fails to comply with any direction or make any payment under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of an amount not exceeding \$1 million, and in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.</p>		<p>relationship.</p> <p>In other markets, key players have been given a reasonable period to renegotiate terms so that these issue are effectively resolved. A transition arrangement where existing agreements are allowed to continue and exempted from the provisions of the Act will allow the parties to resolve issues among themselves without the interference of the legislature.</p> <p>The Authority should consider facilitating these discussions and compensation for the affected parties.</p>
<p><b>Direction for or with respect to Gas Network Code 63E.</b> —(1) The Authority may give directions for or with respect to Gas Network Code to be observed by any person or consumer or any class of persons or consumers to do or not to do such things, or pay such fees or other charges under the Gas Network Code as may be determined by the Authority to the relevant gas shipper to ensure the reliability, availability and continuity of the supply of gas.</p> <p>(2) Any person who fails to comply with any direction</p>		<p>Clear guidelines should be established for what constitutes an action affecting the “reliability”, “availability” and “continuity” of supply of gas. Otherwise, the subjectivity of this clause is abuse by the shipper to pass on costs to the consumers.</p> <p>An avenue for the consumer to appeal against the Authority’s decision should be provided for if the Authority and proper procedure for executing this provision should be provided for in the Act.</p>

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given under subsection (1) shall be guilty of an offence.”		
<p><b>63F.—(1)</b></p> <p>“designated gas licensee” means a person who has been granted a licence or whose licence has been extended under section 7(3)(a) or 7(3)(aa);</p>	<p>“designated gas licensee” means a person who <b>holds</b> <del>has been granted</del> a licence <del>or whose licence has been extended</del> under section 7(3)(a) or 7(3)(aa);</p>	<p>For clarity.</p>
<p><b>Appointment of chief executive officer, director, etc., of designated gas licensee</b></p> <p><b>63J.</b></p> <p>(4) In this section —  “chief executive officer”, in relation to a designated gas licensee, means any person, by whatever name described, who is —  (a) in the direct employment of, or acting for or by arrangement with, the licensee; and  (b) principally responsible for the management and conduct of any type of business of the licensee, and includes any person for the time being performing all or any of the functions or duties of a chief executive officer;</p> <p>“designated gas licensee” has the same meaning as in section 30A;</p> <p>“director” has the same meaning as in section 4(1) of</p>	<p>This clause should be deleted or if that is not possible, “designated gas licensee” has the same meaning as in section <del>63F</del> 30A;</p>	<p>The Authority should not be involved in the appointment of key staff in the gas transporter because that entity is a commercial entity and should be governed by the principles of the market. The Authority’s role is not to be involved in commercial enterprises but to govern through the exercise of powers under the Act.</p>

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the Companies Act (Cap. 50).		Reference Error.
<p><u>Amendment to section 78</u></p> <p><b>25.</b> Section 78 of the Gas Act is amended by inserting, immediately after subsection (5), the following subsection:</p> <p>“(5A) Where any appeal is made against any decision or direction of the Authority under this Part, that decision or direction shall be complied with until such time as the Appeal Panel decides the appeal.”</p>	Suggest removing this new subsection.	<p>The addition subsection 5A to be inserted under Section 78 of the Gas Act could face certain restriction in its implementation.</p> <p>Section 78 of the Gas Act refers to the appeal against decision made by the Authority that Section 69(1) or 70(1) has been infringed. The enforcement provisions are lay out under Section 78 subsection (2). Prior to the Appeal Panel decision being made, it does not seem reasonable for a person to dispose of all or any of the relevant shares or assets in the case of an agreement referred to in section 69(2)(f). There is no redress to a person once it disposes its asset and won the appeal case.</p>
<p><u>Amendments to section 93</u></p> <p><b>29.</b> Section 93 of the Gas Act is amended —</p> <p>(1A) Unless otherwise provided in this Act, an appeal under subsection (1) shall be lodged within 14 days of the receipt of the decision or direction of the Authority or the issue, approval or modification of the code of practice or standards of performance by the Authority.</p>	(1A) Unless otherwise provided in this Act, an appeal under subsection (1) shall be lodged within <b>30</b> <del>14</del> -days of the receipt of the decision or direction of the Authority or the issue, approval or modification of the code of practice or standards of	Depending on the type of issue that a licensee is appealing against, the stipulated time of 14 days to file in an appeal by the aggrieved licensee may not be achievable. As such, we are proposing an extension of the initial notification to 30 days. Aggrieved licensees may require engaging external consultants to put up the detailed justifications for the appeal. As such, we would propose that a 6

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	performance by the Authority.	months period cap be given for the filing in of the appeal