

# **Application to the Essential Services Commission for revocation of an existing generation licence and issue of a new generation licence**

**Horizon Energy Holdings Ltd**

ARBN 078 377 527

**CMS Generation Horizon Energy Holdings Ltd**

ARBN 078 377 372

**Horizon Energy Investment (No 2) Pty Ltd**

ACN 078 121 187

**NRGenerating Holdings (No. 4) B.V.**

ARBN 073 074 530

**Loy Yang Power Management Pty Limited**

ACN 077 985 758

and

**Loy Yang Marketing Management Company Pty Limited**

ACN 105 758 316

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Reference RHM:ADS

# Application to the Essential Services Commission for revocation of an existing generation licence and issue of a new generation licence

## 1 Application

This is an application by Loy Yang Power Partnership (the **Partnership**) and Loy Yang Power Management Pty Limited ACN 077 985 758 (**LYPM**) (the Partnership and LYPM together the **current licensees**) seeking the agreement of the Essential Services Commission (the **Commission**) for the revocation of their licence to generate electricity (the **Generation Licence**) at the Loy Yang A Power Station (**Power Station**).

It is also an application by the current licensees and Loy Yang Marketing Management Company Pty Limited ACN 105 758 316 (**MMCo**) for the issue of a licence to generate electricity at the Power Station (the **New Licence**).

The application is for revocation of the Generation Licence by agreement between the current licensees and the Commission as provided for in section 29(3) of the *Electricity Industry Act 2000* (**EI Act**) and clause 3.2 of the Generation Licence.

The application is for the issue of the New Licence as provided for in section 19 of the EI Act. Pursuant to that section, the Commission may grant or refuse an application for the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and the *Essential Services Commission Act 2001*.

In each case, the application seeks to effect the requested actions concurrently from completion of the sale of the shares in each of the companies comprising the Partnership described in section 4.6 below (**Completion**).

The application is made by Freehills on behalf of MMCo and the current licensees.

## 2 Objectives of the Commission

The revocation of the Generation Licence and the issue of the New Licence is consistent with the objectives of the Commission under the *Essential Services Commission Act 2001* in the circumstances of the transaction outlined below.

There has been speculation concerning the ongoing operation and viability of the Power Station for many years. As the largest base load generator in Victoria this has created undesirable uncertainty regarding the reliability of key generating capacity in the State.

This transaction and the revocation of the Generation Licence and the issue of the New Licence should remove that instability. For that reason and for other reasons, the long term interests of Victorian consumers with regard to the price, quality and reliability of electricity supply will be protected and enhanced.

Furthermore, each of the facilitative objectives in section 8(2)(a), (b), (c), (d) and (f) of the *Essential Services Commission Act 2001* will be enhanced by stable and viable operation of the Power Station. Efficiency, investment, financial viability, competition and consumer outcomes in the electricity industry will all be furthered by certainty in relation to the ongoing position of the Power Station.

### 3 General Information regarding the new applicant

#### 3.1 MMCo

Loy Yang Marketing Management Company Pty Limited ACN 105 758 316 (**MMCo**) is a registered company under the *Corporations Act 2001* (**Corporations Act**) and is registered in Victoria. MMCo has its registered office at Level 42, 101 Collins Street, Melbourne, VIC 3000. MMCo was incorporated on 1 August 2003. A copy of the Certificate of Registration for MMCo is contained in Annexure 1.

#### 3.2 MM HoldCo

MMCo is a wholly owned subsidiary of Loy Yang Marketing Holdings Pty Limited ACN 105 643 963 (**MM HoldCo**). MM HoldCo is a registered company under the Corporations Act and is registered in Victoria. MM HoldCo has its registered office at Level 42, 101 Collins Street, Melbourne, VIC 3000. MM HoldCo was incorporated on 23 July 2003.

MM HoldCo operates as a holding company and was established as a vehicle that could readily provide security over MMCo shares to the lenders.

The shareholders in MM HoldCo are:

| Shareholder   | Equity contribution |
|---|---------------------|
| Tokyo Electric Power Company International BV ( <b>TEPCO</b> )                              | 49.97%              |
| Commonwealth Bank of Australia ( <b>CBA</b> )   | 26.32%              |
| Motor Trades Association of Australia Superannuation Fund Pty Limited ( <b>MTAA Super</b> ) | 17.11%              |
| Westscheme Pty Ltd ( <b>Westscheme</b> )  | 6.60%               |
| <b>Total</b>  | <b>100.00%</b>      |

#### 3.3 MMCo's officers

The directors of MMCo are:

| Name   |
|--|
| Tatsuru Hosomi   |
| Toshiro Kudama   |
| Vinay Kolhatkar (Chairman)                             |
| Gordon Sue (as alternate director for Vinay Kolhatkar) |
| Patrick Gourley  |

Messrs Hosomi and Kudama are executives of Tokyo Electric Power Company, Inc, one of the world's largest electricity generators. Messrs Kolhatkar and Sue are executives of Commonwealth Bank of Australia and have experience in investment in utility assets. Mr Gourley is an officer of Motor Trades Association of Australia Superannuation Fund Pty Ltd which has extensive investments in the utilities and infrastructure sector. MMCo will have experienced and capable

executives to ensure that it is able to carry out its licensed functions, as set out in section 7.

### 3.4 Contact details

MMCo and the current licensees can be contacted through the offices of Freehills on 9288 1749 (Robert Nicholson/Rohan Madders).

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## 4 Background to application

### 4.1 Loy Yang A Power Station and Mine

The Power Station is a 2000MW brown coal fired thermal power station located at Loy Yang.

The Power Station is fuelled by a brown coal open cut mine (**Mine**) located adjacent to the Power Station. The Mine also supplies brown coal to another licensed generator, the Loy Yang B Power Station.

### 4.2 Partnership entities who own the Power Station and the Mine

The Partnership which owns the Power Station and the Mine consists of the following four entities:

- (a) Horizon Energy Holdings Ltd ARBN 078 377 527;
- (b) CMS Generation Horizon Energy Holdings Ltd ARBN 078 377 572;
- (c) Horizon Energy Investment (No 2) Pty Ltd ACN 078 377 572; and
- (d) NRGenerating Holdings (No 4) B.V. ARBN 073 074 530.

### 4.3 Current agency relationship between licensees

The agency relationship between LYPM and the Partnership was formalised in the Deed for Appointment of Partnership Representative dated 17 April 1997 (as amended from time to time) (**LYPM Agency Deed**). Under the LYPM Agency Deed, LYPM is appointed to act as agent on behalf of the Partnership in operating the business of the Power Station and the Mine.

### 4.4 Current licensees

The Generation Licence issued by the Office of the Regulator General (as it then was) on 31 January 1995 (as amended) in respect of the Power Station is currently held by the Partnership and, as agent for the Partnership, LYPM.

### 4.5 Roles of current licensees

Under the LYPM Agency Deed, LYPM is currently responsible for the day to day management, operation, maintenance and dispatch of the Power Station and the Mine.

Under the Generation Licence, LYPM and the Partnership share responsibility for all obligations in respect of the Power Station except for the following obligations which LYPM (as “Managing Licensee” under the Generation Licence) is required to perform:

- (a) maintenance and preparation of accounts in accordance with any guidelines issued by the Commission (clause 8);
- (b) provision of information relating to vested hedging contract quantities on a half-hourly basis to VENCORP (clause 9.4); and
- (c) payment of annual licence fees or other charges (clause 11).

The applicants understand that in the New Licence it is likely each licensee will be responsible for meeting each condition in the licence.

#### 4.6 Proposed acquisition

On 3 July 2003, GEAC Operations Pty Limited ACN 105 367 888 (**GEAC OpCo**), a wholly owned subsidiary of Great Energy Alliance Corporation Pty Limited ACN 105 266 028 (**GEAC**), entered into a share sale agreement to acquire 100% ownership of each entity constituting the Partnership.

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## 5 Details of proposed acquisition

### 5.1 Purchaser

GEAC owns GEAC OpCo. Upon Completion of the proposed acquisition, GEAC OpCo will own each of the partners in the existing Partnership. The Partnership will continue to directly own the Power Station (albeit that the names of the Partnership entities may change).

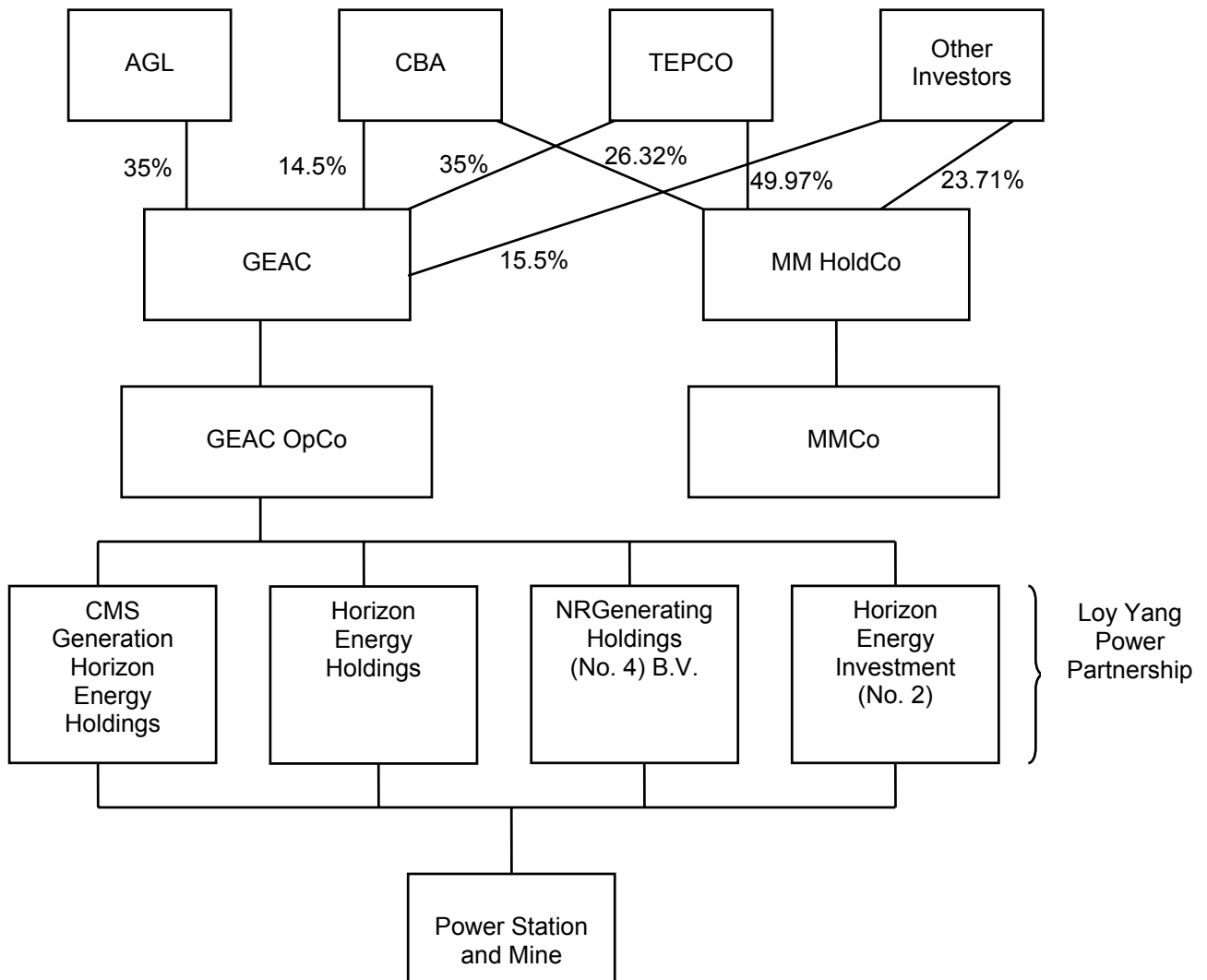
The Partnership will continue to conduct all of its current business activities, using MMCo and LYPM as its agents, as described elsewhere in this application. None of the Partnership's current business activities will be assumed by GEAC OpCo or GEAC, which are holding companies.

The shareholders in GEAC have presently agreed that their shareholdings will, on Completion, be:

| Shareholder  | Equity contribution |
|--------------|---------------------|
| AGL          | 35.0%               |
| TEPCO        | 35.0%               |
| CBA          | 14.5%               |
| MTAA Super   | 11.2%               |
| Westscheme   | 4.3%                |
| <b>Total</b> | <b>100.0%</b>       |

## 5.2 Ownership structure

The ownership structure post acquisition is represented in the following diagram:



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## **6 Role of each party following the acquisition**

### **6.1 Partnership entities**

The Partnership entities' role as owners of the Power Station and Mine will continue unaltered.

### **6.2 MMCo and LYPM**

MMCo's responsibilities are summarised in Annexure 3. MMCo will take over marketing and dispatch functions formerly undertaken by LYPM and will assume responsibility for directing the operation of the Power Station.

LYPM's responsibilities are summarised in Annexure 4. LYPM will lose its marketing and dispatch functions and become a service entity for the Partnership acting at the direction of MMCo on key operational issues.

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## **7 Relationship between the Partnership, MMCo and LYPM**

### **7.1 LYPM as agent of the Partnership**

Under the LYPM Agency Deed, the functions currently performed by LYPM will remain unchanged except for those functions to be undertaken by MMCo as detailed in section 7.2 below.

LYPM will continue to conduct the business of the Partnership (other than the trading, dispatch, marketing and regulatory activities which MMCo will conduct pursuant to the MMCo Agency Deed) as agent for the Partnership, including:

- (a) generating electricity from the Power Station at the quantities and at the times determined by NEMMCO, following bids, if any, by MMCo;
- (b) monitoring and reporting on the need for maintenance or capital improvements (including efficiency improvements) in respect of the Power Station and Mine;
- (c) undertaking maintenance of the Power Station and Mine at the times determined in conjunction with MMCo;
- (d) operating and maintaining the Mine and all infrastructure controlled by the Partnership which is required to support the Power Station, and other power stations in the La Trobe Valley; and
- (e) regulatory compliance of the Power Station and Mine concerning occupational health and safety, environmental laws and other regulations affecting the operation of the Power Station and Mine.

### **7.2 MMCo as agent of the Partnership**

Under the MMCo Agency Deed, the Partnership will appoint MMCo as its agent. MMCo will be responsible for:

- (a) the determination and management of the scheduling of available capacity at the Power Station;

- (b) the determination and management of trading, dispatch and re-bidding and contracting strategies;
- (c) the placement of dispatch offers and re-bids;
- (d) entering into, or proposing to enter into, electricity derivative contracts or power purchase agreements; and
- (e) regulatory dealings with relevant economic and competition regulators (including the Commission, the Australian Competition and Consumer Commission and NEMMCO) for the electricity generation business of the Partnership.

In addition, MMCo will take responsibility for, and manage, the existing hedge book of the Partnership as agent for the Partnership.

Further features of the MMCo Agency Deed which are relevant for the consideration of the Commission are contained in Annexure 2.

### **7.3 MMCo and LYPM**

An Operational Deed between MMCo and LYPM provides that the following plans will be endorsed by MMCo following preparation by LYPM:

- (a) the 'Technical Envelope' for the Power Station setting out the capability and operational parameters of the Power Station;
- (b) An annual Five Year Maintenance Plan which sets out the:
  - (1) nature, duration and effect on the Power Station output of each item of maintenance planned;
  - (2) cost of each item of maintenance, assuming it is carried out at the times stipulated in the plan and the likely cost implications of changing the timing of the maintenance; and
  - (3) maximum degree of flexibility as to the timing and duration of planned maintenance;
- (c) An annual Five Year Breakdown of Operating Costs which sets out:
  - (1) a brief description of the nature of each material cost or category of material cost expected to be incurred in operating the Power Station and Mine;
  - (2) the extent to which that cost or category of cost is a "once-off" cost, a periodic cost (including specifying what period the cost relates to) or a cost which varies with respect to the output of the Power Station or other power stations or shut down or the start up of such stations; and
  - (3) such other cost information as MMCo may reasonably request.

Under the Operational Deed:

- (a) LYPM must operate and maintain the Power Station and Mine in accordance with the endorsed plans;
- (b) MMCo will advise LYPM of the desired quantities of electricity and ancillary services which it wishes to have available for dispatch and LYPM must advise MMCo of the likely operating characteristics and

capabilities of the Power Station and Mine to enable MMCo to make dispatch offers to NEMMCO. MMCo must advise LYPM of dispatch offers lodged with NEMMCO and LYPM must operate the Power Station to enable the satisfaction of those offers; and

- (c) where a forced outage occurs or may occur, LYPM must notify MMCo. To the extent that there is any flexibility as to when the Power Station is taken out, MMCo will determine when the Power Station is taken out. LYPM can respond immediately to emergencies and must promptly report to the Partners and MMCo.

## 8 Technical capacity

MMCo will have the technical capacity to comply with the conditions of the New Licence, the National Electricity Code and the relevant codes and guidelines issued by the Commission. The technical capacity of the current licensees will be unaltered and is well known to the Commission from years of successfully operating the Power Station.

MMCo will be the holder of an Australian Financial Services Licence.

### 8.1 Capability of MMCo's human resources

The approximately 12 staff of MMCo will comprise LYPM's current trading team. These staff members have first hand experience in trading, dispatch and bidding strategies, electricity derivative contracts, power purchase agreements, and dealings with regulators and government agencies.

The senior managers of MMCo and their respective roles will be:

| Name   | <b>Ken Thompson</b><br>General Manager Marketing   |
|--|--|
| Years experience   | 28 years in Victorian power industry   |
| Summary of experience in and knowledge of electricity industry | Ken is responsible for the management and oversight of a specialist group who undertake electricity marketing and trading, risk management and regulatory activities associated with the company's participation in the National Electricity Market.   |
| Name   | <b>Richard Wrightson</b><br>Manager Marketing and Sales  |
| Years experience   | 7 years in Australian power industry (previously worked in the UK for PowerGen and British Energy)   |
| Summary of experience in and knowledge of electricity industry | Richard has experience in a wide range of issues including setting up retail operations, development of risk management policies, pool bidding, wholesale hedging strategies and proprietary trading activities. Richard's role includes strategy development, hedge contracting, proprietary trading and pool operations. |

## 8.2 Assistance provided by LYPM

In addition to the expertise of its own members of staff, MMCo will, under a Services Deed, be able to call on certain of LYPM's resources where required to satisfy any licence obligations which may be imposed upon it (as opposed to the Partnership, which will continue to hold a licence), other than providing dispatch and marketing services.

The Services Deed provides for LYPM to provide certain IT, human resource (payroll etc), procurement, legal and insurance services to MMCo to assist MMCo in carrying out its functions, as determined by MMCo.

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## 9 Cross ownership rules

### 9.1 Background

AGL owns an company which is a licensed distributor in Victoria. This section sets out why, if the acquisition proceeds, AGL would not hold a prohibited interest as a result of the proposed acquisition under Part 3 of the EI Act.

It is noted at the outset that AGL does not have any economic interest in MMCo.

### 9.2 Cross ownership restrictions in the EI Act

Section 68(1) of the EI Act states that "it is unlawful for a person to hold a *prohibited interest*" (emphasis added).

Under section 68(3)(a) of the EI Act, a person, not being a licensee, holds a prohibited interest if the person has a *controlling interest in 2 or more licensees*.

Under section 68(4) of the EI Act, a person who has a controlling interest in a distribution company holds a prohibited interest if the company or person is *entitled, whether or not through a traced interest, to generating capacity of more than 200 megawatts*.

AGL already holds a controlling interest in one licensee, being AGL Electricity Limited (**AGLE**), which holds a distribution licence. In order for there to be a prohibited interest held by AGL as a result of the proposed acquisition:

- (a) AGL would have to hold a *controlling interest* in a licensee of the Power Station; or
- (b) AGL would have to be *entitled to generating capacity* of more than 200 megawatts from the Power Station, and from other generation assets in Victoria.

### 9.3 What is a controlling interest ?

Under section 56 of the EI Act, a person has a controlling interest in a corporation if:

- (a) the person's *voting power* is more than 20%;
- (b) the person and the person's associates have *relevant interests* in shares in the corporations that confer a right to receive more than 20% of its dividends;

- (c) the person and the person's associates have *relevant interests* in the shares in the corporation that would confer an entitlement to more than 20% of its property and rights on a winding up or otherwise; or
- (d) is able, whether alone or in concert with another, and whether by any act or omission or otherwise, to *dominate or control*:
  - (1) the corporation;
  - (2) the financial and operating policies or management of the corporation; or
  - (3) the activities of the corporation as a licensee.

The *Electricity Industry (Prohibited Interest) Regulations 2003* (**Regulations**) which came into force on 24 June 2003, changed the operation of the cross ownership rules.

#### 9.4 Regulation 3(1) and (3) – no controlling interest

Under Regulation 3(1), the *relevant interests* of a person in the shares of a corporation that is entitled, whether or not through a traced interest, to generating capacity are to be *disregarded* for the purposes of determining whether the person holds a prohibited interest under the EI Act, *provided*

- (a) the person's traced interest in the generating capacity of a corporation does not exceed 35% of that generating capacity;
- (b) that person does not hold a relevant interest in the shares of 2 or more corporations each of which is entitled, whether or not through a traced interest, to generating capacity of more than 200 megawatts; and
- (c) the person is not a transmission company and does not have a controlling interest in a transmission company.

In accordance with Regulation 3(1), AGL's *relevant interest* in GEAC, the Partnership or LYPM will be disregarded when determining whether AGL holds a prohibited interest under the EI Act. AGL's relevant interest in GEAC will not exceed 35% and thus AGL would not hold a traced interest in more than 35% of the Power Station's generating capacity.

AGL holds 100% of AGL Power Generation (Victoria) Pty Ltd which owns and operates the 148MW Somerton Power Station but does not hold any other interest in a corporation entitled to generating capacity.

AGL is not a transmission company nor does it have a controlling interest in a transmission company.

Accordingly, AGL will not hold a controlling interest under section 56(b) and (c) of the EI Act.

#### 9.5 No controlling interest under section 56(a)

Section 56(a) of the EI Act provides that a person has a controlling interest in a corporation if the person's *voting power* in the corporation is more than 20%. Section 52 of the EI Act states that a person's voting power in a corporation is determined in accordance with section 610 of the Corporations Act using the relevant interest determined under the EI Act. Section 610 of the Corporations Act calculates voting power as the *relevant interest* of the person and the person's

associates in the shares of the company. Thus, as AGL's relevant interest is disregarded, the same conclusion as that made in relation to section 56(b) and (c) of the EI Act applies.

Accordingly, AGL will not hold a controlling interest under section 56(a) of the EI Act.

## **9.6 No controlling interest under section 56(d)**

Section 56(d) of the EI Act provides that a person has a controlling interest in a licensee if it is able to dominate or control the licensee, the licensee's activities, or the financial and operating policies or management of the licensee.

Following the acquisition, AGL will not hold a direct economic interest in any licensee of the Power Station nor will it otherwise be in a position to dominate or control the licensees. Nor is there any other agreement, arrangement or understanding that would give AGL relevant control.

AGL will not hold a controlling interest based on section 56(d) of the EI Act.

## **9.7 Regulation 3(2) and (3) – no prohibited interest under section 68(4)**

Regulation 3(2) provides that *an entitlement*, whether or not through a traced interest, of a person who has a controlling interest in a distribution company to *generating capacity* is to be *disregarded* when determining whether the person holds a prohibited interest under the EI Act, *provided* it meets the exceptions outlined in Regulation 3(3).

In accordance with Regulation 3(2), AGL's entitlement to generating capacity in the Power Station, through its traced interest in GEAC or the Partnership, will be disregarded when determining whether AGL holds a prohibited interest under the EI Act by virtue of its ownership of AGLE because AGL's traced interest in the generating capacity of the Power Station will not exceed 35% and the other conditions of Regulation 3(3) will be met.

Accordingly, AGL will not hold a prohibited interest under section 68(4) of the EI Act.

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# **10 Procedural issues**

## **10.1 Revocation of Generation Licence**

It is the view of the current licensees and MMCo that, in addition to the current licensees, MMCo will engage in the generation of electricity for supply and sale within the meaning of section 16(1) of the EI Act given its dispatch and marketing activities.

The current licensees understand that in the circumstances of the transaction the Commission prefers to revoke the Generation Licence and issue the New Licence rather than vary or transfer the Generation Licence.

Pursuant to section 29(3) of the EI Act a licence may be revoked in accordance with procedures specified in licence conditions. Clause 3.2 of the Generation Licence provides that the Commission may at any time agree with the Licensees

that the licence should be revoked, in which case the term of the licence ends on the day agreed.

Pursuant to section 19 of the EI Act, the Commission may grant or refuse an application for the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and the *Essential Services Commission Act 2001*. The objectives of the Commission have been addressed in section 2 above.

## **10.2 Limitations on application for transfer or variation**

Sections 24 and 32 of the EI Act contain restrictions on the Commission's grant of an application to issue a licence. This application does not fall within the terms of those sections.

## **10.3 Consultation**

The Commission's *Guidance for Licence Applications* notes that after a licence application is received the Commission publishes a notice in 'the Age' inviting the public to obtain a copy of the application and to make submissions on it. A copy of the application is also published on the Commission's Web site. The closing date for submissions is usually 4 weeks after the application is advertised.

The current licensees and MMCo understand that the Commission will advertise this application and seek submissions. However, there seems to be reason in the circumstances of this transaction to make the closing date for submissions two weeks after advertisement.

As noted above, there is no material change to the nature and conduct of the activity the subject of the New Licence. The technical capability of the proposed licensees to operate the Power Station is unaltered from the present. Particularly, the people involved are the same and the skills of those people are simply to be employed by MMCo rather than LYPM. The subject matter of this application is a technical change rather than one of substance.

Furthermore this transaction has been the subject of significant publicity and scrutiny through various legal and regulatory processes and it is unlikely that any benefit will be derived by the Commission in four weeks of consultation that could not be derived in two weeks given the level of knowledge already held by those likely to participate in a consultation process.

In these circumstances the current licensees consider the public consultation period provided for under section 19(6)(b) of the EI Act need be no more than two weeks.

The sooner the transaction can complete the sooner the interests of Victorian consumers with regard to the price, quality and reliability of electricity supply will be protected and enhanced.

**Freehills**

**24 December 2003**

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## Annexure 1 – Certificate of Incorporation of MMCo



## **Annexure 2 – Relevant features of the MMCo Agency Deed**

### **(a) Parameters within which MMCo must operate**

MMCo's powers and obligations are established in the Agency Deed.

MMCo must act:

- (1) within the budget it submits for approval to the Partnership (see clause (d) below); and
- (2) within the risk management policy adopted by GEAC (being a high level policy document setting business exposure levels and internal governance structures).

MMCo is required to comply with the terms and conditions of the generation licence issued by the Commission.

There is no power for the Partnership to direct MMCo. MMCo will perform its responsibilities pursuant to the Operational Deed and the MMCo Agency Deed without reference to the Partnership.

### **(b) Contracting on behalf of Partnership**

MMCo may act only as the agent of the Partnership – not as principal – in respect of the business of the Partnership. MMCo must enter into any contractual arrangements as disclosed agent for the Partnership or under power of attorney.

Any contract or arrangement entered into by MMCo as agent of the Partners, whether or not the contract or arrangement is within the express powers or the parameters specified, will bind the Partners and will be enforceable against the Partnership.

### **(c) Fees and expenses**

MMCo will not receive any fees for serving as an agent to the Partnership.

The Partnership must make available funds for the payment of all expenditures incurred in relation to the exercise of its powers and performance of its functions as agent of the Partnership. Reimbursement of the payment of all expenditures occurs whether or not the expenditures are in excess of the then currently approved operating budget.

The Partnership indemnifies MMCo against any claim, action, damage, loss or liability MMCo suffers, incurs or is liable for in any way connected with the performance of its functions under the MMCo Agency Deed, Operational Deed or the Services Deed.

### **(d) Reports and budgets**

MMCo is to provide the Partnership with monthly, quarterly and annual reports. MMCo is also responsible for the preparation of annual operating budgets (with respect to those elements of the business of the Partnership administered by it), for approval by the Partnership.

**(e) Termination**

The MMCo Agency Deed contains standard termination provisions. In addition, the Partnership can terminate MMCo's role as agent in other situations, including:

- (1) upon a breach by MMCo of the Agency Deed or the Operational Deed;
- (2) where there is a material change to the nature or scale of MMCo's business;
- (3) where MMCo or MM HoldCo issue securities or change the terms of its securities on issue;
- (4) where there is a change in the composition of the shareholders of MMCo or MM HoldCo such that there is a shareholder in MMCo or MM HoldCo that is not a shareholder in GEAC HoldCo; and
- (5) where a debt is incurred except as contemplated in the MMCo Agency Deed or the Operational Deed,

where notice is given by the Partnership and the breach or other event is not rectified within 20 business days.

The Partnership can also terminate MMCo's role as agent at will by giving 1 month notice.

If the Partnership resolves to terminate MMCo's role as agent, the Partnership is generally required to appoint a new agent to replace MMCo prior to terminating the Agency Deed.

### **Annexure 3 – MCo's responsibilities**

- Determination and management of the scheduling of availability at the Power Station;
- Determination and management of trading, dispatch, and rebidding and contracting strategies;
- Placement of dispatch offers, rebids and ancillary services offers;
- Advising LYPM of desired quantities of electricity and ancillary services which it wishes to have available for dispatch, and of any dispatch offers lodged with NEMMCO;
- Negotiating, entering into and managing electricity derivative contracts or power purchase agreements;
- Dealings with counterparties, including in relation to creditworthiness issues;
- Managing the existing hedge book of derivative contracts transferred from LYPM on Completion;
- Regulatory dealings with relevant economic and competition regulators (including the Commission, the Australian Competition and Consumer Commission and NEMMCO) for the electricity generation business of the Partnership;
- Managing Partnership assets in relation to dispatch and marketing activities;
- Entering into charges, mortgages and security arrangements applicable to those Partnership assets;
- Reporting to the Partnership on trading activities, and as requested by the Partnership on other information relevant to the agency;
- Procuring an audit each financial year of its books, records and accounts and as otherwise requested by the Partners;
- Submitting an annual operating budget to the Partnership;
- Providing annually a five year forward dispatch plan to the Partnership and LYPM annually to enable LYPM to formulate the Five Year Maintenance Plan and Five Year Breakdown of Operating Costs;
- Endorsing a technical envelope provided by LYPM;
- Where a notice suggesting a capital improvement to the Power Station and Mine has been issued by the Partnership or LYPM, reporting to LYPM and Partnership on expected impact on revenue of the capital improvement;
- Endorsing the Five Year Maintenance Plan and the Five Year Breakdown Of Operating Costs provided by LYPM;
- Where LYPM has issued a forced outage notice and there is flexibility in the timing of the forced outage, advising LYPM how to manage the forced outage.

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## **Annexure 4 – LYPM's responsibilities**

- Generating electricity from the Power Station at the quantities and at the times determined by NEMMCO following bids, if any, by MMCo;
- Acting in accordance with any instructions given by NEMMCO;
- Monitoring and reporting on the need for maintenance or capital improvements of the Power Station and Mine;
- Maintenance of the Power Station and at times determined in conjunction with MMCo;
- Operating and maintaining the Mine;
- Regulatory compliance of the Power Station and Mine in relation to occupational health and safety, safety, environmental laws and other regulations affecting the operation of the Power Station and Mine;
- Providing MMCo with information reasonably required to enable MMCo to perform its obligations, and using best endeavours to ensure MMCo is able to comply with the National Electricity Code;
- Preparation of a technical envelope which is provided to MMCo;
- Where a notice suggesting a capital improvement to the Power Station and Mine has been issued by the Partnership or MMCO, preparing a report to the Partnership and MMCo on the proposed improvement
- Providing a Five Year Maintenance Plan to the Partnership and MMCo annually;
- Providing a Five Year Breakdown Of Operating Costs to the Partnership and MMCo annually;
- Advising MMCo of the likely operating characteristics and capabilities of the Power Station and Mine to enable MMCO to make dispatch offers to NEMMCO;
- Where LYPM considers that a forced outage is occurring or will occur, issuing notification to MMCo;
- In an emergency, taking action which it considers necessary or desirable to prevent or minimise injury, damage or loss, and reporting to MMCo and the Partnership;
- Providing services to MMCo including information technology, human resources, procurement, legal and insurance services.