



ELECTRICITY RETAIL LICENCE

Cogent Energy Pty Ltd
ABN 65 121 324 249

Issued on
23 January 2008

ESC Licence: ER – 01 2008 [COEN]
TRIM – C/08/477

**ELECTRICITY RETAIL LICENCE FOR THE SALE OF ELECTRICITY TO
LARGE CUSTOMERS**

This Licence is issued pursuant to section 19 of the *Electricity Industry Act 2000* (Vic) and is subject to the terms set out in this Licence.

Date

This Licence is issued on **23 January 2008**.

Licensee

This Licence is issued to:

Cogent Energy Pty Ltd ABN 65 121 324 249 Level 1, 21 Lansdowne St, East
Melbourne VIC 3002 (the Licensee)

THE COMMON SEAL of the)
ESSENTIAL SERVICES COMMISSION)
was affixed pursuant to the authority)
of the Commission)



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GREG WILSON

CHAIRPERSON



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Part A - Interpretation**1. Definitions**

1.1. Unless the contrary intention appears, a term has the meaning shown opposite it :

Act	the <i>Electricity Industry Act 2000</i> (Vic)
business day	a day other than a Saturday, Sunday or a public holiday in Victoria
Commission	the Essential Services Commission established under the ESC Act
customer	a person who may buy electricity from a retailer and includes another retailer
default use of system agreement	the most recent default use of system agreement submitted by a distributor and approved by the Commission under the distributor's distribution licence
distribution licence	a licence to distribute or supply electricity granted under the Act
distribution services	the transportation and delivery of electricity through a distribution system and any other services which a distributor includes in its network tariff
distribution system	in relation to a distributor, a system of electric lines (generally at nominal voltage levels of 66kV or below) which the distributor uses to distribute or supply electricity
distributor	a person who holds, or is exempt from holding, a distribution licence
Electricity Customer Metering Code	the code of that name certified by the Commission
Electricity Customer Transfer Code	the code of that name certified by the Commission
Electricity Distribution Code	the code of that name certified by the Commission
Electricity System Code	the code of that name certified by the Commission
Energy Retail Code	the Energy Retail Code published by the Commission and effective from 1 January 2005 or any code like that certified by the Commission from time to time

enforcement order	a provisional enforcement order or a final enforcement order made and served by the Commission under section 53 of the ESC Act
ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
final enforcement order	a final order made and served by the Commission under section 53 of the ESC Act
General Exemption Order	the exemption order made under section 17 of the Act which came into effect on 1 May 2002
guideline	a guideline published by the Commission
large customer	in relation to the supply of electricity from a supply point, a person whose aggregate consumption of electricity taken from a supply point has been or, in the case of a new supply point, is likely to be, more than 160 megawatt hours in any year commencing on or after 1 January 1997
Minister	The person who is, from time to time, the Minister for the purposes of the relevant section of the Act
National Electricity Rules	has the same meaning as in the Act
NEMMCO	National Electricity Market Management Company Limited ACN 072 010 327
NMI	has the same meaning as in the Electricity Customer Metering Code
objectives	the objectives specified in section 10 of the Act and section 8 of the ESC Act
Order	an Order in Council made or in force under the Act
provisional enforcement order	a provisional order made and served by the Commission under section 53 of the ESC Act
retail licence	a licence, granted under the Act, authorising the holder thereof to sell electricity
retailer	a person who holds or is exempt from holding a retail licence
supply point	the point at which electricity supplied to a person last leaves a supply facility owned or operated by a distributor before being supplied to that person, whether or not the electricity passes through facilities owned or operated by any other person after leaving that point before being so supplied

undertaking	an undertaking given by the Licensee under section 53(5)(a) of the ESC Act
use of system agreement	an agreement between a retailer (or other person who has made an application for a retail licence) and a distributor which is necessary to ensure that, subject to the Act, electricity is distributed or supplied by means of the distributor's distribution system to the extent necessary to enable the retailer (or other person) to sell electricity to its customers
VENCorp	the Victorian Energy Networks Corporation established under Part 8 of the <i>Gas Industry Act 2001</i> (Vic)
wholesale electricity market	has the same meaning as in the Act
writing	any mode of representing or reproducing words, figures, drawings or symbols in a visible form

1.2. In this Licence, unless the context otherwise requires:

- a. headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
- b. words importing the singular include the plural and vice versa;
- c. words importing a gender include any gender;
- d. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- e. a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
- f. a reference to any statute including the Act and regulation, proclamation, Order in Council, ordinance, code, guideline, procedure or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances, codes, guidelines, procedures or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ordinances, by-laws and determinations issued under that statute;
- g. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- h. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;

- i. other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- j. a period of time:
 - A. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - B. which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- k. an event which is required under this Licence to occur on or by a stipulated day which is not a business day may occur on or by the next business day; and

2. Notices

- 2.1. A notice under this Licence is only effective if it is in writing, and dealt with as follows:
 - a. if given by the Licensee to the Commission – addressed to the Chairperson at the address specified below or as otherwise notified by the Commission
Essential Services Commission, Level 2, Spring Street Melbourne; or
 - b. if given by the Commission to the Licensee – given by Chairperson and addressed (and marked for attention of) the Chief Executive Officer at the address specified below or as otherwise notified by the Licensee:
Cogent Energy Pty Ltd
Level 1, 21 Lansdowne St
East Melbourne VIC 3002
- 2.2. A notice is to be:
 - a. signed by or on behalf of the person giving the notice and delivered by hand; or
 - b. signed by or on behalf of the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by or on behalf of the person giving the notice by electronic mail or facsimile transmission.
- 2.3. A notice is deemed to be effected:
 - a. if delivered by hand – upon delivery to the relevant address;
 - b. if sent by post – upon delivery to the relevant address;
 - c. if transmitted electronically – in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic).

- 2.4. A notice received after 5.00 pm, or on a day that is not a business day, is deemed to be effected on the next business day.

Part B - Licence

3. Grant of the Licence

- 3.1. In exercise of its powers under section 19 of the Act, the Commission grants the Licensee a licence to sell electricity to large customers on the terms and conditions set out in this Licence.
- 3.2. This Licence does not permit the Licensee to:
- a. sell electricity through the wholesale electricity market; or
 - b. sell electricity to a customer who is not a large customer.
- 3.3. This Licence is subject to any prohibition set out in any Order issued and in force under section 23 of the Act.

Part C - Conditions of the Licence

4. Status of the requirements in this Part

- 4.1. A breach of any of the requirements set out in this Part C:
- a. is a breach of a condition for the purposes of Part 7 of the ESC Act; and
 - b. is a breach of a condition for the purposes of clause 14 of this Licence.
- 4.2. The Licensee acknowledges that any condition deemed by the Act to be included in a licence to sell electricity forms part of this Licence and that a breach of any such condition constitutes a breach of a condition for the purposes of clause 14 of this Licence.

5. Payment of fees

- 5.1. The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.

6. On going technical capacity

- 6.1. The Licensee must at all times maintain:
- a. such technical capacity as is:
 - A. required to meet its obligations under this licence; and
 - B. reasonably required to undertake the activities authorised by this licence; and

- b. such additional technical capacity as is reasonably required to enable it to meet and utilise technological advances in the electricity industry.

6.2. In this clause 6 activities undertaken pursuant to this Licence includes any activities undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence; and

6.3. The Licensee must ensure that any contract entered into with any third parties contains such provisions as are necessary to enable the Licensee to comply with the requirements of this clause 6.

7. Compliance with regulatory instruments

7.1. Subject to clause 7.2, the Licensee must comply with:

- a. the Electricity Distribution Code;
- b. the Electricity Customer Metering Code;
- c. the Electricity Customer Transfer Code;
- d. the Electricity System Code; and
- e. any other code, procedure or guideline issued by the Commission from time to time that is expressed as being one with which the Licensee must comply,

to the extent they are applicable to activities undertaken by the Licensee pursuant to this Licence.

7.2. The Commission may, from time to time, by written notice grant an exemption in relation to or otherwise modify the application of some of the requirements of the instruments referred to in clause 7.1.

7.3. The Licensee must have in place a system for monitoring its compliance with this Licence and the instruments referred to in clause 7.1.

7.4. The Licensee must notify the Commission of any breach by it of the conditions of this Licence including any of the instruments referred to in clause 7.1 as soon as reasonably practicable after it becomes aware of the breach.

8. Electricity purchase arrangements

8.1. The Licensee must have in place agreements or arrangements for the purchase of electricity, through the wholesale electricity market or otherwise and any necessary authorisations as are required to enable the Licensee to perform its obligations under any contracts for the sale of electricity to which it is a party.

- 8.2. The Licensee is deemed to comply with clause 8.1 if it is registered with NEMMCO as a 'Customer' in accordance with the National Electricity Rules.

9. Use of distribution system agreements

- 9.1. Subject to clause 9.3, the Licensee must have a use of system agreement with each distributor in whose distribution area the Licensee has entered or intends to enter into contracts for the sale of electricity pursuant to this Licence.
- 9.2. Where the use of system agreement between the Licensee and the relevant distributor is the distributor's default use of system agreement, the Licensee must agree to any variation of the terms and conditions of the default use of system agreement approved by the Commission.
- 9.3. Clause 9.1 does not apply where the Licensee holds a distribution licence in relation to the distribution area in which the Licensee has or intends to enter contracts for the sale of electricity pursuant to this Licence. In this case, the default use of system agreement is deemed to apply to that sale of electricity as though the distributor and the retailer under that agreement were separate entities.

10. Provision of distribution services

- 10.1. The Licensee must not enter into a contract for the sale of electricity with a large customer unless:
- a. the contract also provides for the provision of or procurement by the Licensee of related distribution services;
 - b. the large customer has entered into an agreement with a licensed distributor for the provision of related distribution services; or
 - c. where the large customer takes an intermediary distribution or supply of electricity (as defined in the General Exemption Order) from a distributor exempt from the requirement to hold a distribution licence under the General Exemption Order (the 'exempt distributor'), the contract provides for the provision or procurement by the Licensee of related distribution services as if the large customer were directly connected to the network of the distributor within whose distribution licence area the customer is located provided that the Licensee is in turn liable to that distributor for charges.

11. Information to large customers

- 11.1. In any bill issued to a large customer, the Licensee must include the following information:
- a. the NMI assigned to that large customer's metering installation;
 - b. the relevant tariff or tariffs applicable to the large customer;

- c. distribution services charges, except where clause 10.1.b applies;
- d. greenhouse gas emissions in accordance with section 23A of the Act; and
- e. details of any variation to the tariff or tariffs or any other terms and conditions of the contract between the Licensee and the large customer that have not previously been notified by the Licensee to the large customer.

12. Separate accounts

- 12.1. If the Licensee holds more than one category of licence under Part 2 of the Act, the Licensee must prepare separate accounts for each part of its business in respect of which it has been granted a separate licence.

13. Provision of information

- 13.1. The Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 13.2. The Licensee must as soon as reasonably practicable provide VENCORP with such information relating to any activities undertaken pursuant to this Licence as VENCORP may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by VENCORP.
- 13.3. The Licensee must, as soon as reasonably practicable, provide the Commission with such information relating to any activities undertaken pursuant to this Licence as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by the Commission.
- 13.4. The Licensee must, as soon as reasonably practicable, provide the Commission with information on its ongoing technical capacity to undertake the activities authorised by this Licence, in a manner and form specified by the Commission.
- 13.5. In this clause 13:
- a. activities undertaken pursuant to this Licence includes any activities undertaken by a contractor, subcontractor, agent or other third party (a **third party**) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence; and
 - b. information includes information in the possession, custody or control of any third party.

The Licensee must ensure that any contract entered into with any such third parties contains such provisions as are necessary to enable the Licensee to comply with the requirements of this clause 13.

14. Revocation of the Licence

- 14.1. The Commission may revoke this Licence at any time at the request of or with the consent of the Licensee.
- 14.2. The Commission may revoke this Licence if:
- a. the Licensee fails to comply with an undertaking or a final enforcement order;
 - b. the Licensee breaches any condition of this Licence, including any condition deemed to apply by the Act or any other legislation;
 - c. any information provided by the Licensee pursuant to this Licence or in its application for the Licence is found to be false or misleading;
 - d. the Licensee's financial viability or technical capacity is such that the Commission considers that the Licensee would be unable to satisfactorily meet its obligations under this Licence or to its large customers; or
 - e. the Licensee fails to comply with a decision, direction, determination or arrangement (including any arrangement concerning load shedding) (as the case may be) made by or agreed with the Commission, VENCORP or the Minister.
- 14.3. Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensee, specifying:
- a. the basis upon which the Commission is revoking this Licence; and
 - b. the date upon which the revocation will take effect, such date to be:
 - A. in the case of a breach of clause 8 or 9.1 or where clause 14.2.a applies or where in the Commission's opinion it is appropriate that the Licence be revoked in a shorter time frame having regard to its objectives and the events or circumstances that gave rise to the notice being issued, no less than 5 business days after the date upon which the notice is issued; and
 - B. in all other cases, no less than 20 business days after the date upon which the notice is issued,

and, subject to clause 14.4, this Licence will be revoked on the date specified in the notice.
- 14.4. The Commission may, at its discretion and by written notice to the Licensee, withdraw a notice issued under clause 14.3 at any time prior to the revocation date specified in the notice if the Commission is satisfied that the Licensee has complied with the relevant enforcement order or undertaking, rectified the breach or complied with the relevant decision, direction, determination or arrangement (as the case may be) or if the Commission considers that it is otherwise appropriate to withdraw the notice.

15. Variation

- 15.1. For the purposes of section 29(1)(a) of the Act, the Commission may vary this Licence in accordance with the procedures set out in this clause 15.
- 15.2. Where the Commission:
- a. wishes to amend the list of instruments referred to in clause 7.1; or
 - b. is of the opinion that a proposed variation to the Licence is consistent with its objectives and is:
 - A. of an administrative or trivial nature; or
 - B. required urgently, such that it would not be appropriate to issue a notice under section 29(1)(c) of the Act,
- the Commission may issue a notice to the Licensee varying this licence accordingly.
- 15.3. A notice issued under clause 15.2 will include:
- a. the terms of the variation;
 - b. the purpose of the variation;
 - c. where clause 15.2.b.B applies, confirmation that the Commission is of that opinion; and
 - d. the date upon which the variation will take effect.

16. Audit

- 16.1. Upon request by the Commission, the Licensee must appoint an auditor to be approved by the Commission to conduct audits of:
- a. the Licensee's compliance with its obligations under the Act or this Licence, including but not limited to the codes and guidelines referred to in clause 7.1; and
 - b. the reliability and quality of information reported by the Licensee to the Commission and the consistency of that information with the Commission's specifications and
 - c. any other matter as directed by the Commission.
- 16.2. The Licensee must ensure that the Commission is promptly provided with a copy of any reports produced by the auditor pursuant to this clause. The Licensee must comply, and must require the auditor to comply, with any guidelines issued by the Commission dealing with audits under this clause.

17. Dispute resolution

- 17.1. The Licensee must enter into a customer dispute resolution scheme approved by the Commission under section 28 of the Act for large customers.