



ESSENTIAL SERVICES COMMISSION

ELECTRICITY RETAIL LICENCE

ERM Power Retail Pty Ltd
ABN 87 126 175 460

Varied on
5 December 2012

ESC Licence: ER – 03 2007 [ERMPR]
TRIM – C/12/37063

ELECTRICITY RETAIL LICENCE

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 **31 October 2007**.

Licensee

This Licence is issued to:

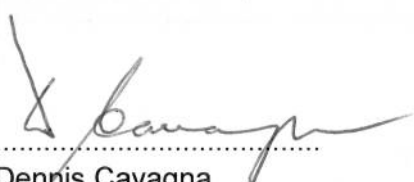
ERM Power Retail Pty Ltd ABN 87 126 175 460 (the Licensee)

Level 5
123 Eagle Street
Brisbane
QLD 4000

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

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Dennis Cavagna

ACTING 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 :

AEMO	Australian Energy Market Operator Limited, ACN 072 010 327
Act	the <i>Electricity Industry Act 2000</i> (Vic)
administrator	means an administrator appointed by the Commission under section 34 of the Act in respect of the Licensee's retail business
business customer	has the same meaning as in the Energy Retail Code
Business Day	a day other than a Saturday, Sunday or a public holiday in Melbourne, 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
deemed contract	means a contract for the supply or sale of electricity deemed by the Act to have been entered into or otherwise be in place between a retailer and customer
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
domestic or small business customer	in relation to the Licensee and a supply of electricity from a supply point, has the same meaning as in any relevant Order

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	means the code setting out terms and conditions relevant to contracts for the supply or sale of electricity determined by the Commission under the Act
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)
Exemption Order	the Order in Council made under section 17 of the Act which came into effect on 1 May 2002
final enforcement order	a final order made and served by the Commission under section 53 of the ESC Act
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
last resort event	in respect of a retailer, means: (a) the retailer's retail licence is suspended or revoked; or (b) the right of the retailer to acquire electricity from the wholesale electricity market is suspended or terminated, whichever first occurs.

medium 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, 40 megawatt hours in any year up to and including 160 megawatt hours in any year commencing on or after 1 January 1997
meter	has the meaning given in the Act
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
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
other retailer	in respect of a customer and a last resort event, means the retailer which, immediately prior to the occurrence of the last resort event in respect of the retailer, sold electricity to the customer
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
relevant customer	in relation to electricity from a supply point, has the same meaning as in any relevant Order
retail business	means the business that a retailer carries on under its retail licence or exemption granted under the 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
smart meter	means an interval meter designed to transmit data to a remote locality that meets the functionality requirements for advanced metering infrastructure set out in any relevant Order made under section 46D of the Act
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
wholesale electricity market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules
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.

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:

ERM Power Retail Pty Ltd
Level 5, 123 Eagle Street,
Brisbane, QLD, 4000.

A notice is to be:

- c. signed by or on behalf of the person giving the notice and delivered by hand; or
- d. signed by or on behalf of the person giving the notice and sent by pre-paid post; or
- e. transmitted electronically by or on behalf of the person giving the notice by electronic mail or facsimile transmission.

2.2. 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)*.

2.3. 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 business customers on the terms and conditions set out in this Licence.
- 3.2. This Licence does not permit the Licensee to sell electricity through the wholesale electricity market.
- 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 19 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 19 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 comply with the requirements of the *Electricity Safety Act 1998* and any regulations made under that Act.
- 7.5. 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 AEMO 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 Exemption Order) from a distributor exempt from the requirement to hold a distribution licence under the 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 customers

- 11.1. The Licensee must include at least the following information in a bill issued to the customer for the supply or sale of electricity:
- a. the National Meter Identifier (NMI) assigned to the customer's metering installation and the NMI checksum or, if there is no assigned NMI, the meter number or another unique identifying mark assigned to the metering installation;
 - b. the relevant tariff or tariffs applicable to the customer;

- c. if the Licensee directly passes through network charges to the customer, the separate amount of the network charge; and
 - d. information concerning greenhouse gas emissions connected with the generation of electricity supplied to the customer or the generation of electricity in general.
- 11.2. If a variation is made to the tariff or to terms or conditions of a contract, unless notice of the variation has been previously provided to a customer, the Licensee must include with the customer's next bill, or otherwise as soon as practicable, a statement setting out details of the variation. Despite the foregoing, the Licensee must give domestic or small business customers with smart meters such notice no later than 20 business days prior to the variation.
- 11.3. Unless clause 14 applies, the Licensee must give notice to a customer who is a party to a deemed contract with the Licensee on or as soon as practicable after becoming aware of the deemed contract which:
 - a. informs the customer that there is deemed to be a contract between the customer and the Licensee for the supply and sale of electricity;
 - b. sets out the tariff and summarises other terms and conditions under the deemed contract;
 - c. describes the methods by which the deemed contract may be terminated and related terms and conditions; and
 - d. outlines the options available to the customer.
- 11.4. Where the Act or this licence requires or has required the Licensee to publish the Licensee's tariffs in the Government Gazette, the Licensee must also publish on the same day in a newspaper circulating generally in Victoria:
 - a. the tariffs; and
 - b. a statement that the Licensee's related terms and conditions are available on request and free of charge in English and, if the Licensee has a significant number of customers from the same non-English speaking background, in such other languages as are agreed with the Commission (and the terms and conditions must actually be available in those languages).
- 11.5. Where the Licensee has financial responsibility in the wholesale electricity market for a NMI relating to premises previously occupied by a domestic or small business customer which it knows to be vacant, the Licensee must, if it elects to leave the premises energised, deliver to the premises an information package relating to offers of retail contracts which are available.

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. Payment methods

- 13.1. The Licensee must not implement a pre-payment meter scheme without the prior approval of the Commission.
- 13.2. The Licensee must notify the Commission at least 20 business days prior to the termination of an arrangement with any agency or payment outlet through which customers of the Licensee may pay bills.

14. Retailer of last resort

- 14.1. On or before a date to be nominated by the Commission in a communication given to the Licensee, the Licensee must submit to the Commission proposed tariffs, terms and conditions upon which the Licensee would sell electricity in accordance with the requirement under clause 14.2.
- 14.2. Subject to clause 14.3, the Licensee must sell electricity to a customer at tariffs and on terms and conditions approved or determined by the Commission under Division 8 of Part 2 of the Act.
- 14.3. In approving proposed terms and conditions under clause 14.2 the Commission may approve terms and conditions which do not deal with the subject matter of all of the provisions of the Energy Retail Code.
- 14.4. The requirement under clause 14.2:
- a. applies only if the Licensee is so directed by the Commission in a notice given to the Licensee;
 - b. imposes an obligation on the Licensee to sell electricity to a customer which:
 - A. commences when a last resort event occurs in respect of the customer's other retailer; and
 - B. ends:
 - i. after three months;
 - ii. when the customer advises the Licensee in writing that the sale is no longer required;
 - iii. when the customer transfers to another retailer; or
 - iv. when the customer enters into a new contract for the sale of electricity with the Licensee,
- whichever occurs first.

14.5. As soon as practicable after being notified by the Commission or otherwise becoming aware of its obligation to a customer under clause 14.2, the Licensee must give the customer notice in writing:

- a. that a last resort event has occurred in respect of the other retailer;
- b. that, as a result, the Licensee and the customer are deemed to have entered into a contract for the sale of electricity under section 49E(5) of the Act;
- c. of the date the deemed contract commenced;
- d. of the tariff and the terms and conditions of the deemed contract;
- e. that the customer's meter has been or will be read, or an estimate will be made, as at the date the deemed contract commenced so that it can be established what amount of electricity has been sold to the customer by the other retailer prior to the occurrence of the last resort event and what amount of electricity has been and will be sold to the customer by the Licensee after the occurrence of the last resort event;
- f. of that meter reading or estimated meter reading. Notice of the meter reading or estimated meter reading may be given after notice of the other matters contemplated by this clause 14 is required to be given;
- g. whether any debt owed by the customer to the other retailer or by the other retailer to the customer, as the case may be, will continue to be so owed and, if it will not, to whom and by whom it will be owed;
- h. of alternatives available for the customer to arrange a transfer to another retailer or to obtain any different tariff, or different terms and conditions, from the Licensee including that the customer may advise the Licensee in writing that the sale of electricity by the Licensee is no longer required; and
- i. of how and where to obtain further information.

15. Provision of information to AEMO and Commission

- 15.1. The Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 15.2. The Licensee must as soon as reasonably practicable provide AEMO with such information relating to any activities undertaken pursuant to this Licence as AEMO 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 AEMO.
- 15.3. 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.

15.4. 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.

15.5. In this clause 15:

- 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 15.

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.

18. Compliance with laws

18.1. The Licensee must comply with all applicable laws.

19. Revocation of the Licence

19.1. The Commission may revoke this Licence:

- a. at any time at the request of or with the consent of the Licensee; or
- b. in accordance with section 73 of the Act.

- 19.2. 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, AEMO or the Minister;
 - f. one of the following events happens:
 - A. a petition or other application being presented or resolution being passed for the winding up, liquidation or dissolution of the Licensee or notice of intention to propose such a resolution being given or the entry of the Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;
 - B. the appointment of an administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensee's property;
 - C. the Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;
 - g. it is in the public interest to do so.
- 19.3. 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 19.2.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 19.4, this Licence will be revoked on the date specified in the notice.

- 19.4. The Commission may, at its discretion and by written notice to the Licensee, withdraw a notice issued under clause 19.3 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.

20. Variation

- 20.1. 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 20.
- 20.2. 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.
- 20.3. A notice issued under clause 20.2 will include:
- a. the terms of the variation;
 - b. the purpose of the variation;
 - c. where clause 20.2.b applies, confirmation that the Commission is of that opinion; and
 - d. the date upon which the variation will take effect.

21. Administrator

- 21.1. If an administrator is appointed to the Licensee's business under section 34 of the Act, the administrator must exercise its functions and powers in such a manner as may be specified by the Commission in the instrument of appointment.
- 21.2. The Licensee is responsible for the acts and defaults of the administrator.