



ESSENTIAL SERVICES COMMISSION

ELECTRICITY GENERATION LICENCE

**CMS Generation Horizon Energy Holdings Ltd
Horizon Energy Holdings Ltd
NRGenerating Holdings (No. 4) B.V.
Horizon Energy Investment (No 2) Pty Ltd**

**Loy Yang Power Management Pty Limited
and
Loy Yang Marketing Management Company Pty Limited
trading as
Loy Yang Power**

**Issued on
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GENERATION LICENCE

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, words and phrases appearing in *Italics* have the meaning ascribed to them in part 1 of schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in part 2 of schedule 1.

2. GRANT OF LICENCE

The *Commission*, in exercise of the powers conferred by section 19 of the *Act*, licenses the *Licensee* to generate electricity for *supply* and sale at the *licensed power station* subject to the conditions set out in this licence.

3. TERM

- 3.1 This licence takes effect on and from 8 April 2004 and has been varied on the dates set out in Schedule 2.
- 3.2 The *Commission* may at any time agree with the *Licensee* that this licence should be revoked, in which case the term of this licence ends on the day agreed.
- 3.3 The *Commission* may at any time give at least 20 *business days* notice of revocation to the *Licensee* if the *Licensee* does not comply with an *enforcement order* or an *undertaking*, and the *Commission* decides that it is necessary or desirable to revoke this licence in order to achieve the *policy objectives*, in which case the term of this licence ends, subject to clause 3.4, on the expiration of the period of the notice.
- 3.4 The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3.3 if, before the expiration, the *Licensee* complies with the *enforcement order* or the *undertaking* (as the case may be).

4. MULTIPLE PERSON LICENCES

Each *Licensee* must ensure each other *Licensee* complies with the conditions of this licence.

5. COMPLIANCE WITH CODES AND RULES

- 5.1 The *Licensee* must comply with applicable provisions of the *Electricity System Code* (until revoked), and the *Electricity Distribution Code*.
- 5.2 Subject to any limitation on the *Licensee's* ability to do so under any of the codes or rules referred to in clause 5.1, if the *Licensee* becomes aware of a material breach of any of the codes or rules by the *Licensee*, the *Licensee* must notify the *Commission* of the material breach in accordance with any guidelines issued by the *Commission* or, in the absence of such guidelines, as soon as practicable.

6. STANDARDS AND PROCEDURES

- 6.1 At the written request of the *Commission*, the *Licensee* must participate to the extent specified by the *Commission* in the development, issue and review of any *standards and procedures* specified by the *Commission*.
- 6.2 The *Licensee* must in accordance with guidelines published by the *Commission* under the Essential Services Commission Act 2001, or as directed by the *Commission*, report to the *Commission* on its performance against applicable *standards and procedures*.
- 6.3 If the *Commission* considers that:
- (a) the *Licensee* has failed to comply with clause 6.1; or

(b) *standards and procedures* applicable to the *Licensee* have been shown to be insufficient to prevent abuses by the *Licensee* of any monopoly power it enjoys,

the *Commission* may issue *standards and procedures* applicable to the *Licensee* and with which the *Licensee* must comply.

7. ACCOUNTS

The *Licensee* must ensure that its accounts are prepared in accordance with any guidelines prepared and issued by the *Commission*, and must maintain its accounting records accordingly.

8. PROVISION OF INFORMATION TO VENCORP

8.1 Following a request in *writing* from *VENCORP*, the *Licensee* must provide to *VENCORP* such documents or information as *VENCORP* may reasonably require to perform its functions and exercise its powers under the *Act*.

8.2 A question as to the reasonableness of a requirement by *VENCORP* for documents or information as contemplated by clause 8.1 shall be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

9. PROVISION OF INFORMATION TO THE COMMISSION

The *Licensee* must provide to the *Commission*, in the manner and form decided by the *Commission*, such information as the *Commission* may from time to time require.

10. PAYMENT OF LICENCE FEES

10.1 The *Licensee* must pay the fees and charges in respect of this licence determined by the *Minister* under section 22 of the *Act*.

10.2 In so far as a fee or charge determined by the *Minister* under section 22 of the *Act* in respect of this licence is an annual fee or charge, it must be paid either in four equal instalments on the last days of September, December, March and June in each year or paid in one payment on or before the last day of September in each year and in the manner notified to the *Licensee* by the *Commission*.

10.3 A fee or charge determined by the *Minister* under section 22 of the *Act* in respect of this licence (other than the licence fee referred to in clause 10.2) must be paid at the times and in the manner notified to the *Licensee* by the *Commission*.

11. ADMINISTRATOR

11.1 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.

11.2 The *Licensee* is responsible for the acts and defaults of the *administrator*.

12. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws.

13. VARIATION

13.1 This licence may be varied in accordance with:

- (a) the procedures specified in section 29 of the *Act*; or
- (b) section 31(8) of the *Act*; or
- (c) clause 13.2.

13.2 The *Commission* may, if it considers it expedient, vary this licence to provide for arbitration of disputes between the *Licensee* and other persons regarding the terms and conditions of access to any essential facilities in the Victorian electricity supply industry.

14. TRANSFER OF LICENCE

This licence may be transferred in accordance with section 31 of the *Act*.

15. COMMUNICATIONS

15.1 Unless the context otherwise requires, a *communication* must be in *writing*.

15.2 A *communication* is to be regarded as having been given by the sender and received by the addressee:

- (a) when delivered in person to the addressee;
- (b) 3 *business days* after the date of posting, if the *communication* is posted within Australia; or
- (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia; or
- (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee.

THE COMMON SEAL of)
 THE ESSENTIAL SERVICES)
 COMMISSION)
 was affixed pursuant to)
 the authority of the Commission)
 on [4 April 2004])



TONY LARKIN
 Commissioner

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this licence:

"Act" means the *Electricity Industry Act 2000*;

"administrator" means an administrator appointed by the *Commission* under section 34 of the *Act* in respect of the business carried on by the *Licensee* under this licence;

"business day" means a day on which banks are open for general banking business in Melbourne, excluding a Saturday or Sunday;

"Commission" means the Essential Services Commission under the *Essential Services Commission Act 2001*;

"communication" means any notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this licence;

"Electricity Distribution Code" means the code of that name certified by the *Commission*;

"Electricity System Code" means the code of that name certified by the *Commission*;

"electricity transmission system" means a transmission system in Victoria (generally at nominal voltage levels of 220kV or above), which the holder of a *transmission licence* may use to *transmit* electricity;

"enforcement order" means a provisional or final order made and served by the *Commission* under section 53 of the *Essential Services Commission Act 2001*;

"licensed power station" means the Loy Yang A Power Station;

"Licensee" means CMS Generation Horizon Energy Holdings Ltd ARBN 078 377 372, Horizon Energy Holdings Ltd ARBN 078 377 527, NRGenerating Holdings (No. 4) B.V. ARBN 073 074 530, Horizon Energy Investment (No 2) Pty Ltd ACN 078 121 187, Loy Yang Power Management Pty Limited ACN 077 985 758 and Loy Yang Marketing Management Company Pty Limited ACN 105 758 316, or each of them, as the context requires;

"Minister" means the person who is the Minister for the purposes of section 22 of the *Act*;

"policy objectives" means the objectives specified in section 10 of the *Act* and section 8 of the *Essential Services Commission Act 2001*;

"standards and procedures" means overall performance standards which are issued by the *Licensee* under clause 7.1 or by the *Commission* under clause 7.3;

"supply", in relation to electricity, means the delivery of electricity;

"VENcorp" means the Victorian Energy Networks Corporation Pty Ltd ACN 081 026 066;

"undertaking" means an undertaking given by the *Licensee* under section 53(5)(a) of the *Essential Services Commission Act 2001*; and

"writing" includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2. INTERPRETATION

2.1 In this licence, unless the context otherwise requires:

- (a) headings are 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, schedule or part is to a condition, clause, schedule or part of this licence;
- (f) a reference to terms of an offer or agreement is to terms, conditions or provisions thereof;
- (g) a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances 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;
- (h) 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;
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- (k) a period of time:
 - (1) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (2) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) 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**.
- (m) The obligations of the **Licensees** under the conditions of this licence are joint and several obligations of each **Licensee**.

2.2 Schedule 2 is intended to contain a record of amendments to the licence, with brief details to be specified in it of the clause affected, date of effect and nature of the relevant amendment. The Schedule is not, however, intended to affect the interpretation of this licence; it is included for convenience only.

