



ELECTRICITY RETAIL LICENCE

**ENERGY BRIX AUSTRALIA CORPORATION
PTY LTD
ABN 79 074 736 833**

**Issued on
15 February 2006**

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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 **15 February 2006**.

Licensee

This Licence is issued to:

Energy Brix Australia Corporation Pty Ltd ABN 79 074 736 833 (the Licensee) located at 677 Springvale Road Mulgrave Vic 3170

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 in bold type 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
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 the relevant 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
enforcement order	a provisional order or a final order issued under section 53 of the ESC Act

ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
final enforcement order	a final order issued under section 53 of the ESC Act
General Exemption Order	the exemption order made under section 17 of the Act coming into effect on 1 May 2002
guideline	a guideline published by the Commission
large customer	a person whose aggregate consumption from a supply point has been or, in the case of a new supply point, has contracted 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	the Rules approved in accordance with section 6(1) of the <i>National Electricity (Victoria) Law</i> and which are applicable as a result of the operation of section 6 of the <i>National Electricity (Victoria) Act 2005</i> (Vic)
NEMMCO	National Electricity Market Management Company Limited ACN 072 010 327
NMI	national metering identifier
Order	an Order in Council made or in force under the Act
provisional enforcement order	a provisional order issued under section 53 of the ESC Act
retail licence	a licence to sell electricity granted under the Act
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 (Vic)</i>
wholesale electricity market	the market for wholesale trading in electricity operated by NEMMCO 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 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;
 - 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; and
- 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 Chairman at the address specified below or as otherwise notified by the **Commission**; or
Essential Services Commission Level 2, Spring Street Melbourne; or
 - b. if given by the **Commission** to the Licensee – given by the Chairman and addressed to (and marked for attention of) the Chief Executive Officer at the address specified below or as otherwise notified by the Licensee,
Energy Brix Australia Corporation Pty Ltd 677 Springvale Road
Mulgrave 3170
- 2.2. A notice is to be:
 - a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by 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 – upon actual receipt by the addressee.
- 2.4. A notice received after 5.00 pm, or on a day that is not a **business day** in the place of receipt, 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** and having regard to the information contained in the application submitted by the Licensee pursuant to section 18 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. The Licensee is not permitted to:
- a. sell electricity through the **wholesale electricity market** unless otherwise expressly authorised; 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 an **Order** issued under section 23 of the **Act**.

4. Revocation of the Licence

- 4.1. The **Commission** may revoke this Licence at any time with the consent of the Licensee.
- 4.2. The **Commission** may revoke this Licence if:
- a. the Licensee fails to comply with a provisional **enforcement order**, 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. at any time 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**;
 - d. 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**; or
 - e. the **Commission** is satisfied that it is otherwise appropriate to do so, having regard to the objectives set out in section 8 of the **ESC Act**.
- 4.3. 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 no less than 5 business days after the date upon which the notice is issued,

and, subject to clause 4.4, this Licence will be revoked on the date specified in the notice.

- 4.4. Where a notice has been issued under clause 4.3, the **Commission** may, at its discretion, withdraw the notice 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 do so. Where the **Commission** has withdrawn the notice pursuant to this clause, this Licence will remain on foot.

5. Variation

- 5.1. 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 5.
- 5.2. Where the **Commission**:
 - a. wishes to amend the list of instruments referred to in clause 8.1; or
 - b. is of the opinion that a proposed variation to the Licence 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.
- 5.3. A notice issued under clause 5.2 will include:
 - a. the terms of the variation;
 - b. the purpose of the variation;
 - c. where clause 5.2.b.B applies, confirmation that the **Commission** is of that opinion; and
 - d. the date upon which the variation will take effect.

Part 3 - Conditions of the Licence

6. Status of the requirements in this Part

- 6.1. A breach of any of the requirements set out in this Part 3:
- 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 4 of this Licence.

7. Payment of fees

- 7.1. The Licensee must pay as directed by the **Commission** the licence fee determined in accordance with section 22 of the **Act** and notified by the **Commission** in accordance with this clause 7.
- 7.2. At the time this Licence is granted, the **Commission** will notify the Licensee of the then current licence fee.
- 7.3. The **Commission** will by 1 October each year notify the Licensee of the licence fee for the previous financial year. The Licensee must pay the licence fee within 20 business days of the date of the notice.

8. Compliance with regulatory instruments

- 8.1. Subject to clause 8.2, the Licensee must comply with:
- a. the **Electricity Distribution Code**;
 - b. the **Energy Retail Code**;
 - c. the **Electricity Customer Metering Code**;
 - d. the **Electricity Customer Transfer Code**;
 - e. the **Electricity System Code**; and
 - f. any other code or **guideline** notified by the **Commission** from time to time,

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

- 8.2. 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 8.1.
- 8.3. The Licensee must have in place a system for monitoring its compliance with this Licence and the instruments referred to in clause 8.1.

- 8.4. The Licensee must notify the **Commission** as soon as reasonably practicable after it becomes aware of any breach by it of the terms of this Licence including any of the instruments referred to in clause 8.1.

9. Electricity purchase arrangements

- 9.1. 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.
- 9.2. The Licensee is deemed to comply with clause 9.1 if it is registered with **NEMMCO** as a 'Customer' in accordance with the National Electricity Rules.

10. Use of distribution system agreements

- 10.1. Subject to clause 10.3, 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.
- 10.2. The Licensee must agree to any reasonable variation of the terms and conditions of any agreement referred to in clause 10.1 proposed by the relevant **distributor**. Where the Licensee and the **distributor** are not able to agree whether the proposed variation is reasonable, the matter will be referred to the **Commission** for determination.
- 10.3. Clause 10.1 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 Licensee's **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.

11. Energy only contracts

- 11.1. 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 provided documentary evidence to the Licensee that the **large customer** has entered in an agreement with a licensed **distributor** for the provision of related **distribution services** and the contract includes a condition that such an agreement be maintained at all times; or
- c. 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**.

12. Information to large customers

- 12.1. 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. network charges, except where clause 11.1 b or clause 11.1.c 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 been previously notified by the Licensee to the **large customer**.

13. Separate accounts

- 13.1. 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.

14. Provision of information

- 14.1. The Licensee must as soon as reasonably possible provide **VENCorp** with such information as **VENCorp** may 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**.
- 14.2. The Licensee must as soon as reasonably possible provide the **Commission** with such information as the **Commission** may 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**.

- 14.3. The Licensee must as soon as reasonably possible provide the **Commission** with details of any material change to its financial viability or technical capacity from that described in its application submitted pursuant to section 18 of the **Act**.

15. Audit

- 15.1. 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 this Licence;
 - 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**.
- 15.2. The Licensee must ensure that the **Commission** is promptly provided with a copy of any reports produced by the auditor. The Licensee must comply, and must require the auditor to comply, with any **guidelines** issued by the Commission dealing with audits under this clause.

16. Dispute resolution

- 16.1. The Licensee must enter into a **customer** dispute resolution scheme approved by the **Commission** for **large customers**.