

**ELECTRICITY TRADER LICENCE**

**STATE ELECTRICITY COMMISSION OF  
VICTORIA  
for  
Portland Electricity Supply Agreements  
and  
Point Henry Electricity Supply Agreements**

**As varied on  
29 June 2005**

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
2.	GRANT OF LICENCE	3
3.	TERM	3
4.	REVOCAION	3
5.	VARIATION	4
6.	COMPLIANCE WITH CODES	4
7.	SEPARATE ACCOUNTS	6
8.	PROVISION OF INFORMATION TO VENCORP	6
9.	PROVISION OF INFORMATION TO THE OFFICE	6
10.	PAYMENT OF LICENCE FEES	6
11.	ADMINISTRATOR	6
12.	COMMUNICATIONS	7
13.	DISPUTE RESOLUTION	7
<b>Schedule</b>		
1	DEFINITIONS AND INTERPRETATION	8
2	VARIATIONS TO THE LICENCE	12

REVOKED  
(21 JUNE 2017)

## **TRADER 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**

Subject to and in accordance with the terms and conditions of this licence, the **Commission** grants the *Licensee's* application (made under section 18(1)(d) of *the Act*) for a licence to sell electricity:

- (a) to Alcoa Portland Aluminium Pty Ltd (formerly Portland Smelter Services Pty Ltd) pursuant to the *Portland Electricity Supply Agreements*, being electricity purchased by the *Licensee* in accordance with the *National Electricity Code*;
- (b) to Alcoa of Australia Ltd pursuant to the *Point Henry Electricity Supply Agreements*, being electricity purchased by the *Licensee* in accordance with the *National Electricity Code*; or
- (c) purchased by the *Licensee* from Alcoa of Australia Ltd pursuant to the *Point Henry Electricity Supply Agreements*, pursuant to the *National Electricity Code*;
- (d) purchased by the *Licensee* from the *Pacific Hydro Group* pursuant to the *Portland Wind Energy Project Agreement*, pursuant to the *National Electricity Code*; or
- (e) to the *Pacific Hydro Group* pursuant to the *Portland Wind Energy Project Agreement* being electricity purchased by the *Licensee* in accordance with the *National Electricity Code*.

subject to the conditions set out in this licence.

### **3. TERM**

- 3.1 This licence first had effect on and from 3 October 1994 and has been varied on the dates set out in schedule 2.

### **4. REVOCATION**

- 4.1 For the purposes of section 29(3) of *the Act* the procedures by which the **Commission** may revoke this licence are those set out in the remainder of this clause.
- 4.2 The **Commission** may revoke this licence if the **Commission** is satisfied that it is appropriate to do so having regard to such circumstances as it considers relevant, including but not limited to the following:
- (a) failures (in the opinion of the Commission) on behalf of the licensee to comply with a provisional enforcement order, undertaking or a final enforcement order;

- (b) the seriousness (in the opinion of the Commission) of any breaches of the license that the Commission considers the Licensee to have committed; or
- (c) any failures to comply with decisions, directions or determinations (as the case may be) of the Commission, VENC Corp, or the Minister.

4.3 A written notice of revocation must set out the date on which this licence shall cease to have effect (*termination date*).

4.4 In determining the termination date the *Commission* may have regard to such circumstances as it considers relevant, including but not limited to the following:

- (a) any submission made by the *Licensee*; and
- (b) any urgency attaching to the need to revoke the licence.

## 5. VARIATION

5.1 For the purposes of section 29(1)(a) of the *Act* the procedures by which the *Commission* may vary this licence are those set out in the remainder of this clause.

5.2 The *Commission* may vary this licence in accordance with clause 5.3 where, in the opinion of the *Commission*, the variation it proposes to make to the licence is:

- (a) administrative;
- (b) trivial;
- (c) likely to be uncontroversial; or
- (d) urgent – such that it would, in the *Commission's* opinion, not be appropriate to follow the procedure for variation under section 29(2) of the *Act*.

5.3 The *Commission* may vary this licence by informing the *Licensee* in writing of:

- (a) the terms of the variation;
- (b) the purpose of the variation;
- (c) where clause 5.2(d) applies, the nature of the urgency surrounding the variation;
- (d) the date on which the variation shall take effect; and
- (e) how the *Licensee* may make representations as to the appropriateness of the variation.

## 6. COMPLIANCE WITH CODES

6.1 Subject to clauses 6.3 and 6.4, the *Licensee* must comply with applicable provisions of the *System Code*.

6.2 Subject to any limitation on the *Licensee's* ability to do so under any of the codes referred to in clause 6.1, if the *Licensee* becomes aware of a material breach of any of the codes 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.

6.3 If complying with a requirement of the *System Code* would result in the *Licensee* being in breach of one or more of:

- (a) the Portland Electricity Supply Agreements; or
- (b) the Point Henry Electricity Supply Agreements

then the *Licensee* is not required to comply with that requirement.

6.4 If:

- (a) the *Licensee* requires the co-operation of Portland Smelter Services Pty Ltd, Alcoa of Australia Ltd or any other party to the *Portland Electricity Supply Agreements* or the *Point Henry Electricity Supply Agreements* (other than the *Licensee*) (called the "*Owner*") to comply with a requirement of the *System Code*; and
- (b) the *Licensee* has used reasonable endeavours to obtain the *Owner's* co-operation in order to enable the *Licensee* to comply with that requirement; and
- (c) under the *Portland Electricity Supply Agreements* or the *Point Henry Electricity Supply Agreements* (as at the date of this licence), the *Licensee* has no ability to require the *Owner* to so co-operate with the *Licensee* and the *Owner* is not in breach of one or more of those agreements by refusing to so co-operate with the *Licensee*,

then the *Licensee* is not required to comply with that requirement.

6.5 The *Commission* may, on application of the *Licensee*, make a determination that the provisions of any of the codes referred to in clause 6.1 are to apply in relation to the *Licensee*, either generally or in a particular case or class of cases, as if a specified provision or provisions were omitted or were modified or varied in a specified manner and, subject to section 35 of the *ESC Act*, when such a determination is made, the relevant code applies accordingly.

6.6 An application by the *Licensee* under clause 6.5 must set out a draft of the determination the *Licensee* seeks.

6.7 If:

- (a) the *Commission* has received an application from the *Licensee* for a determination under clause 6.5 and *VENCorp* has received a copy of the application; and
- (b) at the end of 20 *business days* after the day on which the later of those two events occurred the *Commission* has not:
  - (i) made a determination; or
  - (ii) advised the *Licensee* that a determination will not be made,

then the *Commission* will be deemed to have made a determination in the form of the draft determination set out in the application.

## 7. SEPARATE ACCOUNTS

The *Licensee* must ensure that separate accounts are prepared for the business the *trader* carries on in accordance with guidelines set 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 OFFICE

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, and 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 11.2) 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. COMMUNICATIONS

- 12.1 Unless the context otherwise requires, a *communication* must be in *writing*.
- 12.2 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;
  - (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia;
  - (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
  - (e) when it is electronic *communication*, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

## 13. DISPUTE RESOLUTION

- 13.1 The *Licensee* must enter into a dispute resolution scheme approved by the *Commission*.
- 13.2 The *Commission* may approve a customer dispute procedure set out in the *Portland Electricity Supply Agreements* and/or the *Point Henry Electricity Supply Agreements* for the purposes of clause 13.1.

**THE COMMON SEAL of  
THE ESSENTIAL SERVICES  
COMMISSION**

was affixed pursuant to the  
authority of the Commission  
on 29 June 2005

JOHN C. TAMBLYN  
**Chairperson**

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS

In this licence:

**"Act"** means the *Electricity Industry Act 2000* (Vic);

**"administrator"** means an administrator appointed by the **Commission** under section 34 of the *Act* in respect of the businesses 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 established under the *ESC Act*

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

**"ESC Act"** means the *Essential Services Commission Act 2001* (Vic);

**"final enforcement order"** has the meaning given by section 53 of the *ESC Act*;

**"generation licence"** means a licence to generate electricity for **supply** or sale granted under section 19 of the *Act*;

**"Licensee"** means State Electricity Commission of Victoria, a body corporate established under the State Electricity Commission Act 1958;

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

**"National Electricity Code"** means the Code approved in accordance with section 6(1) of the *National Electricity Law* as amended from time to time;

**"National Electricity Law"** means the National Electricity (Victoria) Law which applies in Victoria as a result of the operation of section 6 of the National Electricity (Victoria) Act 1997 (as amended from time to time);

**"Pacific Hydro Group"** means the entities holding a **generation licence** in relation to the *Portland Wind Farm*;

**"Point Henry Electricity Supply Agreements"** means:

- (a) the Point Henry Electricity Supply Agreement between the **Licensee** and Alcoa of Australia Ltd dated 31 July 1986 (as amended);



- (b) the Point Henry Flexible Tariff Deed between the *Licensee* and State Trust Corporation of Victoria dated 1 December 1986 (as amended);
- (c) the Automatic Reclosing Point Henry - Geelong Terminal Station Line Electricity Extension Works Contract between the *Licensee* and Alcoa of Australia Ltd dated 23 October 1991 (as amended); and
- (d) the Deed relating to Point Henry aluminium smelter between the *Licensee*, Alcoa of Australia Ltd and the Crown dated 31 July 1984 (as amended);

**"Portland Electricity Supply Agreements"** means:

- (a) the Portland Electricity Supply Agreement between the *Licensee* and Portland Smelter Services Pty Ltd dated 31 July 1984 (as amended);
- (b) the Deed of Release between the *Licensee* and Alcoa of Australia Ltd dated 31 July 1984 (as amended);
- (c) the Portland Electricity Supply Agreement Principals Agreement between the *Licensee*, CITIC Australia (Portland) Pty Ltd, Alcoa of Australia Ltd, Portland Smelter Services Pty Ltd, Permanent Trustee Company Ltd and Marubeni Aluminium Australia Pty Ltd and Aluvic Services Pty Ltd dated 31 January 1986 (as amended);
- (d) the Portland Flexible Tariff Deed between the *Licensee* and State Trust Corporation of Victoria dated 1 December 1986 (as amended);
- (e) the Portland Electricity Supply Agreement Operating Agreement between the *Licensee* and Portland Smelter Services Pty Ltd dated 30 March 1989 (as amended);
- (f) the Electricity Payment Agreement between the *Licensee*, CITIC Australia (Portland) Pty Ltd and Portland Smelter Services Pty Ltd dated 24 December 1992 (as amended);
- (g) the Portland Aluminium Smelter Additional Supply Agreement between the Licensee and Portland Smelter Services Pty Ltd dated 18 September 1997 (as amended); and
- (h) The Portland Additional Supply Agreement Principals Agreement between the Licensee, Alcoa of Australia Limited, Permanent Trustee Company Limited, CITIC Australia (Portland) Pty Limited, Portland Smelter Services Pty Ltd, Marubeni Aluminium Australia Pty Ltd and Aluvic Metal Sales Pty Ltd dated 18 September 1997 (as amended);

**"Portland Wind Energy Project Agreement"** means the power purchase agreement in relation to the Portland Wind Farm between the *Pacific Hydro Group* and The State Electricity Commission of Victoria trading as "VicPower Trading" ABN 58 155 836 293;

**"provisional enforcement order"** has the meaning given by section 53 of the ESC Act;

"**Portland Wind Farm**" means the **Portland Wind Energy Project** (including each Wind Generator) which is to be constructed, owned and operated by or on behalf of the **Pacific Hydro Group** and located in South West Victoria. For the avoidance of doubt and for the purpose of this agreement:

- (a) the **Portland Wind Energy Project** comprises the **Wind Farm Collector Systems**, the Wind Farm 66kV/220kV Substation and the Cape Sir William Grant, Cape Nelson and Cape Bridgewater wind farm sites that will be combined and centrally metered; and
- (b) the Yambuk wind farm site is not included as part of the Wind Farm.

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

"**trader**" means the business of the Licensee of and incidental to:

- (a) the sale of electricity to Portland Smelter Services Pty Ltd pursuant to the **Portland Electricity Supply Agreements**; and
- (b) the sale and purchase of electricity to and from Alcoa of Australia Ltd pursuant to the **Point Henry Electricity Supply Agreements**;
- (c) the sale and purchase of electricity to and from **Pacific Hydro Group** pursuant to the **Portland Wind Energy Project Agreement**;

"**undertaking**" has the meaning given by section 53 of the **ESC Act**;

"**VENCorp**" means the Victorian Energy Networks Corporation established under Part 2A of the **Gas Industry Act 1994**;

"**Wind Farm Collector Systems**" means the 66kV and 22kV overhead/underground electricity lines and associated equipment to be constructed from each of the Wind Generators to the Wind Farm 66kV/220kV Substation;

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

## 2. INTERPRETATION

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:
  - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (ii) 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*.

**SCHEDULE 2****VARIATIONS TO THE LICENCE**

<b>Date</b>	<b>Reason for variation</b>
21 June 1996	To require the <i>Licensee</i> to delegate its functions and powers that relate to energy trading to an Executive Committee and make other consequential changes.
September 1997	To include new clauses pertaining to an Additional Supply Agreement and a new Principals Agreement.
6 May 1999	To effect administrative changes required to the licence for the commencement of the national electricity market.
19 October 2001	To delete clause 8 to reflect the new structure of the <i>Licensee</i> and to make other administrative amendments to reflect changes to the electricity industry.
29 June 2005	To make provision for the <i>Licensee</i> to source power from the <i>Portland Wind Energy Project</i> .

REVOKED  
(21 JUNE 2017)