

**ESSENTIAL SERVICES** COMMISSION

ELECTRICITY GENERATION LICENCE

**National Power Australia Investments Limited
(ABN 51 075 257 537)**

**Hazelwood Pacific Pty Ltd
(ABN 19 074 351 376)**

**Australian Power Partners B.V.
(ARBN 075 477 208) and**

**Hazelwood Churchill Pty Limited
(ABN 164 079 403)**

as partners in the Hazelwood Power Partnership

**Transferred on
16 April 2014**

ELECTRICITY GENERATION 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 **23 June 1997**

Licensees

This Licence is issued to:

National Power Australia Investments Limited
(ABN 51 075 257 537)

Hazelwood Pacific Pty Ltd
(ABN 19 074 351 376)

Australian Power Partners B.V.
(ARBN 075 477 208) and

Hazelwood Churchill Pty Limited
(ABN 164 079 403)

as partners in the Hazelwood Power Partnership, and together the Licensees.

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





Dr Ron Ben-David
Chairperson

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Part A – Definitions and 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)
administrator	an administrator appointed by the Commission under section 34 of the Act
AEMO	Australian Energy Market Operator (ACN 072 010 327)
business day	a day other than a Saturday, Sunday or a public holiday in Victoria
Commencement Date	23 June 1997
Commission	the Essential Services Commission established under the ESC Act
Electricity Distribution Code	the code of that name certified by the Commission
Electricity System Code	the code of that name certified by the Commission
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 under section 53 of the ESC Act
guideline	a guideline published by the Commission
Hazelwood Power Partnership	the partnership constituted under the Hazelwood Power Partnership Deed
Hazelwood Power Partnership Deed	the Deed of that name dated 2 August 1996 made between the Licensees as amended and restated from time to time.
licensed power station	Hazelwood Power Station
Licensees	National Power Australia Investments Limited (ABN 51 075 257 537) Hazelwood Pacific Pty Ltd (ABN 19 074 351 376) Australian Power Partners B.V. (ARBN 075 477 208) and Hazelwood Churchill Pty Limited (ABN 164 079 403) as partners in the Hazelwood Power Partnership.
Minister	the person who is, from time to time, the Minister for the purposes of the relevant section of the Act

National Electricity Law	the National Electricity (Victoria) Law which applies in Victoria as a result of the operation of section 6 of the National Electricity (Victoria) Act 2005
National Electricity Rules	the rules of that name made under the National Electricity Law
objectives	the objectives of the Commission under the Act and 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
undertaking	an undertaking given by the Licensees under section 53(5)(a) of the ESC Act
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
total generating capacity entitlement	the aggregate of all entitlements to generating capacity of the Licensees within the meaning of Part 3 of the Act

- 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.
- (l) a reference to the Licensees is a reference to each person named as comprising the Licensees as well as a reference to all of the persons named as comprising the Licensees collectively.

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 one or more of the Licensees to the Commission – addressed to the Chief Executive Officer of the Commission at the address specified below or as otherwise notified by the Commission:

Essential Services Commission, Level 37, 2 Lonsdale Street,
Melbourne VIC 3000; or

- (b) if given by the Commission to the Licensees – given by the Chief Executive Officer of the Commission and addressed to (and marked for attention of) the Chief Executive Officer of each Licensee as the case may be, at the addresses specified below or as otherwise notified by the Licensees:

National Power Australia Investments Limited
Level 33, Rialto South Tower, 525 Collins Street, Melbourne, Victoria
3000

Hazelwood Pacific Pty Ltd
Level 33, Rialto South Tower, 525 Collins Street, Melbourne, Victoria
3000

Australian Power Partners B.V.
Level 33, Rialto South Tower, 525 Collins Street, Melbourne, Victoria
3000

Hazelwood Churchill Pty Limited
Level 33, Rialto South Tower, 525 Collins Street, Melbourne, Victoria
3000

- 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 method set out in the *Electronic Transactions (Victoria) Act 2000 (Vic)* for determining the time of receipt.
- 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 Licensees a licence to generate electricity for supply or sale on the terms and conditions set out in this Licence with effect from the Commencement Date.
- 3.2. This Licence only applies to the generation of electricity at the licensed power station.

Part C - Conditions of the Licence

4. Status of the requirements in this Part

- 4.1. A failure on the part of the Licensees to meet 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 11 of this Licence.
- 4.2. The Licensees acknowledge that any condition deemed by the Act to be included in a licence to generate electricity for supply or sale, forms part of this Licence and that a breach of any such condition constitutes a breach of a condition for the purposes of clause 11 of this Licence.

5. Payment of fees

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

6. Ongoing technical capacity

- 6.1. The Licensees must at all times maintain:
- (a) such technical capacity as is:
 - (a) required to meet the 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 them to meet and utilise technological advances in the electricity industry.
- 6.2. In this clause 6, activities undertaken pursuant to this Licence include any activities undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensees for the purpose of enabling the Licensees to undertake the activities authorised by this Licence.
- 6.3. The Licensees must ensure that any contract, entered into with any third parties for the performance of licensable functions, contains such provisions as are necessary to ensure the third party provides its services in a way that enables the Licensees to comply with the requirements of this licence and this clause 6.

7. Compliance with regulatory instruments

- 7.1. Subject to clause 7.2, the Licensees must comply with:
- (a) the Electricity Distribution Code;
 - (b) the Electricity System Code;
 - (c) relevant industry standards; and
 - (d) any other code, procedure or guideline issued by the Commission from time to time that is expressed as being one with which the Licensees must comply,
- to the extent they are applicable to activities undertaken by the Licensees 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 Licensees must have in place an adequate system for monitoring compliance with this Licence and the instruments referred to in clause 7.1.
- 7.4. The Licensees must comply with the relevant requirements of the *Electricity Safety Act 1998* and any regulations made under that Act.
- 7.5. The Licensees must comply with the National Electricity Rules and the National Electricity Law.

- 7.6. The Licensees together must be registered as a generator with AEMO or exempt from the requirement to be registered as a generator in accordance with the National Electricity Rules.

8. Compliance with Laws

- 8.1. The Licensees must comply with all applicable laws.

9. Separate accounts

- 9.1. If the Licensees hold more than one category of licence under Part 2 of the Act, the Licensees must prepare separate accounts for each part of their business in respect of which it has been granted a separate licence.

10. Provision of information

- 10.1. The Licensees must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 10.2. The Licensees must notify the Commission of any breach by them of the conditions of this Licence including any of the instruments referred to in clause 7.1 as soon as reasonably practicable after becoming aware of the breach.
- 10.3. The Licensees must as soon as reasonably practicable provide AEMO with such information, relating to activities undertaken pursuant to this Licence, as AEMO may properly request in connection with the performance of their functions or the exercise of their powers under the Act in the manner and form specified by AEMO.
- 10.4. The Licensees must, as soon as reasonably practicable, provide the Commission with such information, relating to 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.
- 10.5. The Licensees must, as soon as reasonably practicable, provide the Commission with information on its ongoing technical capacity or financial viability to undertake the activities authorised by 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 and in a manner and form specified by the Commission.
- 10.6. In this clause 10:
- (a) activities undertaken pursuant to this Licence includes any activities of that type undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensees 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.

- 10.7. The Licensees must ensure that any contract, entered into with any third parties for the performance of licensable functions, contains such provisions as are necessary to ensure the third party provides its services in a way that enables the Licensee to comply with the requirements of its licence.

11. Revocation

- 11.1. The Commission may revoke this Licence:
- (a) at any time at the request of or with the consent of the Licensees; or
 - (b) in accordance with the Act.
- 11.2. Consistent with its objectives under the Act and the ESC Act, the Commission may revoke this Licence if:
- (a) the Licensees fail to comply with an undertaking or a final enforcement order;
 - (b) the Licensees breach any condition of this Licence, including any condition deemed to apply by the Act or any other applicable legislation;
 - (c) any information provided by the Licensees pursuant to this Licence or in their application for the Licence is found to be materially false or misleading;
 - (d) the Licensees' technical capacity or financial viability is such that the Commission considers that the Licensees would be unable to satisfactorily meet their obligations under this Licence;
 - (e) the Licensees fail 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) following any one of the following events:
 - (1) a petition or other application being presented or resolution being passed for the winding up, liquidation or dissolution of a Licensee or notice of intention to propose such a resolution being given or the entry of a Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;
 - (2) the appointment of an administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensees' property;
 - (3) a Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;

the Commission determines that the event, or actions arising from an event, would, or would be likely to, result in the inability of a licensee to meet its obligations under this licence.

11.3. Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensees, 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) where clause 11.2(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 11.4, this Licence will be revoked on the date specified in the notice.

11.4. The Commission may, at its discretion and by written notice to the Licensees, withdraw a notice issued under clause 11.3 at any time prior to the revocation date specified in the notice if the Commission is satisfied that the Licensees have complied with the relevant final 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.

12. Variation

12.1. 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 12.

12.2. 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 Licensees varying this licence accordingly.

12.3. A notice issued under clause 12.2 will include:

- (a) the terms of the variation;
- (b) the purpose of the variation;
- (c) where clause 12.2(b)(b) applies, confirmation that the Commission is of that opinion; and
- (d) the date upon which the variation will take effect.

13. Transfer

- 13.1. This Licence may be transferred in accordance with section 31 of the Act.

14. Audit

- 14.1. Upon request by the Commission, the Licensees must appoint an auditor to be approved by the Commission to conduct audits of:

- (a) the Licensees' compliance with its obligations under the Act or this Licence, including but not limited to the codes, procedures and guidelines referred to in clause 7.1; and
- (b) the reliability and quality of information reported by the Licensees to the Commission and the consistency of that information with the Commission's specifications; and
- (c) any other matter applicable to assessing the adequacy of compliance by the Licensees pursuant to this Licence as directed by the Commission.

- 14.2. The Licensees must ensure that the Commission is promptly provided with a copy of any reports produced by the auditor pursuant to this clause. The Licensees must comply, and must require the auditor to comply, with any guidelines issued by the Commission dealing with audits under this clause. The Licensees must also provide draft reports if requested by the Commission.

15. Administrator

- 15.1. Subject to clause 11, if an administrator is appointed to a 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.

16. Compliance with Licence

- 16.1. Each Licensee must ensure that each other Licensee complies with the conditions of this Licence.
- 16.2. The conditions (both express and implied) in this Licence bind the Licensees jointly and each of them severally and, for the avoidance of doubt, each is jointly and severally liable for any failure to comply with the conditions of this Licence.
- 16.3. None of the Licensees will be released from its obligations under this Licence by reason of the Licence ceasing to be binding on any other of the Licensees.
- 16.4. The Commission may take any action available to it in relation to a failure to comply with the conditions of this Licence against any one or more of the Licensees, at the Commission's absolute discretion.

Schedule 1 – Variations to the Licence

Date	Variation
23 June 1997	<p>Licence issued to:</p> <p>National Power Australia Investments Limited (ABN 51 075 257 537)</p> <p>Hazelwood Pacific Pty Ltd (ABN 19 074 351 376)</p> <p>Australian Power Partners B.V. (ARBN 075 477 208)</p> <p>Hazelwood Investment Company Pty Limited (ACN 075 041 360) and</p> <p>CISL (Hazelwood) Pty Limited (ACN 074 747 185)</p> <p>as partners in the Hazelwood Power Partnership</p>
16 April 2014	<p>Licence varied to make administrative changes necessary to reflect the Commission's standard electricity generation licence, and to reflect the change in composition of the Hazelwood Power Partnership,</p> <p>from: National Power Australia Investments Limited (ABN 51 075 257 537)</p> <p>Hazelwood Pacific Pty Ltd (ABN 19 074 351 376)</p> <p>Australian Power Partners B.V. (ARBN 075 477 208)</p> <p>Hazelwood Investment Company Pty Limited (ACN 075 041 360) and</p> <p>CISL (Hazelwood) Pty Limited (ACN 074 747 185)</p> <p>as partners in the Hazelwood Power Partnership.</p> <p>to: National Power Australia Investments Limited (ABN 51 075 257 537)</p> <p>Hazelwood Pacific Pty Ltd (ABN 19 074 351 376)</p> <p>Australian Power Partners B.V. (ARBN 075 477 208) and</p> <p>Hazelwood Churchill Pty Limited (ABN 164 079 403)</p> <p>as partners in the Hazelwood Power Partnership.</p>