



ELECTRICITY GENERATION LICENCE

LYB AUSTRALIA LIMITED
ABN 87 055 563 785

As varied on 9 May 2018

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ELECTRICITY GENERATION LICENCE

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ELECTRICITY GENERATION LICENCE

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, words and phrases appearing *like this* have the meaning given 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

- 2.1 Subject to the conditions set out in this licence, the *Licensee* is authorised to generate electricity for supply or sale, to supply electricity and to sell electricity.
- 2.2 Under this licence, the *Licensee* may only generate electricity for supply or sale at, and may only supply electricity and may only sell electricity generated at, the *licensed power station*.

3. TERM

- 3.1 This licence first had effect on 5 May 1997 and has been varied on the dates set out in schedule 2.
- 3.2 The *Commission* may revoke this licence in accordance with clauses 3.3 or 3.4.
- 3.3 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.
- 3.4 The *Commission* may at any time give notice of revocation in accordance with clause 3.5 to the *Licensee* if:
- (a) the *Licensee* does not comply with an *enforcement order* or an *undertaking*; and
 - (b) the *Commission* is satisfied that revocation of this licence is necessary having regard to the *objectives*,
- in which case, subject to clause 3.6, the term of this licence ends on the expiration of the period of the notice.
- 3.5 The *Commission* must give at least 20 *business days* notice of revocation to the *Licensee* under clause 3.4.
- 3.6 The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3.4 if, before the expiration, the *Licensee* complies with the *enforcement order* or the *undertaking* (as the case may be).

4. COMPLIANCE WITH ORDERS, CODES AND GUIDELINES

4.1 As well as complying with this licence, the *Licensee* must comply with all applicable provisions of:

- (a) any *order*;
- (b) the following codes:
 - (1) the *Electricity Distribution Code*; and
 - (2) the *Electricity System Code*;
- (c) any *guideline*, if the *guideline* itself requires the *Licensee* to comply or the *Commission* has informed the *Licensee* that compliance is required by way of a *communication* given to the *Licensee* by the *Commission*.

4.2 The *Licensee* must monitor its compliance with this licence and any *order*, code or *guideline* it is required to comply with under clause 4.1.

4.3 If the *Licensee* becomes aware of a material breach of this licence or any *order*, code or *guideline* by the *Licensee*, the *Licensee* must notify the *Commission* of the material breach as soon as practicable.

5. CO-OPERATION WITH VENCORP

5.1 As soon as practicable after any request made by *VENCorp*, the *Licensee* must supply such information to *VENCorp* as *VENCorp* may reasonably require to perform its functions and exercise its powers under the *Act*.

5.2 Any question as to the reasonableness of a requirement by *VENCorp* for information as contemplated by clause 5.1 is to be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

5.3 If information is provided to *VENCorp* following a request under clause 5.1, *VENCorp* must only use the information for the purpose for which it was provided and must not disclose the information to any other person except to the *Commission* under *VENCorp's* Transmission Licence, or with the agreement of the *Licensee*. If *VENCorp* is required to disclose information provided to *VENCorp* following a request under clause 5.1 to the *Commission* or by law or the lawful requirement of a government or government authority, then *VENCorp* must notify the *Licensee* before disclosing the information.

6. PROVISION OF INFORMATION TO THE COMMISSION

6.1 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.

6.2 Change of control

- (a) the *Licensee* must give the *Commission* a notice if any event occurs, any decision by the *Licensee* is made, or any other circumstances exists that will effect a *change of control* of the Licensee.
- (b) the notice required under condition 6.2(a) must set out particulars of the relevant event, decision or circumstance as soon as practicable, and in any case not later than 3 Business Days after the Licensee becomes aware of the event or circumstance or makes the decision.

7. PAYMENT OF LICENCE FEES

- 7.1 The *Licensee* must pay as directed by the *Commission* a licence fee determined in accordance with section 22 of the *Act*.
- 7.2 Insofar 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 in either four equal instalments on the last days of September, December, March and June in each financial year or paid in one payment on or before the last day of September in each financial year and in the manner notified to the *Licensee* by the *Commission*.
- 7.3 The *Licensee* must pay as directed by the *Commission* such other fees and charges in respect of this licence as are determined by the *Minister* in accordance with section 22 of the *Act*.

8. ADMINISTRATOR

- 8.1 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.
- 8.2 The *Licensee* is responsible for the acts and defaults of the *administrator*.

9. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws.

10. VARIATION

This licence may be varied in accordance with section 29 of the *Act*.

11. TRANSFER OF LICENCE

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

12. COMMUNICATIONS

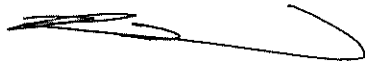
- 12.1 A *communication* must be in *writing*.

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 an electronic *communication*, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

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

was affixed pursuant to the
authority of the Commission
on 26 September 2018



Dr Ron Ben-David
Chairperson



**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 other than a Saturday or Sunday or a public holiday appointed under the *Public Holidays Act 1993*.

change of control - a change of control occurs if a shareholder of an entity, at the time it becomes a shareholder:

- (a) does not have the capacity to control the composition of the board of directors of the entity or a holding company of that entity;
- (b) is not in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of that entity or a holding company of that entity; or
- (c) does not beneficially hold more than 50% of the issued share capital of the entity or a holding company of that entity,

subsequently has the ability to do so, or does so, provided that no change of control will be deemed to have occurred where:

- (d) the ultimate holding company of that entity remains the same as its ultimate holding company (if any) on the date upon which the shareholder first became a shareholder; or
- (e) the change of control results from the acquisition or cancellation of, or dealing in, securities which are traded on a recognised financial market

Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*.

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

control in respect of an entity has the same meaning given in section 50AA of the Corporations Act

Corporations Act means the *Corporations Act 2001 (Cth)*

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*.

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

guideline means a guideline published by the *Commission*.

licensed power station means Loy Yang B Power Station.

Licensee means LYB Australia Limited ABN 87 055 563 785.

Minister means the person who is the Minister for the purposes of the relevant section of the *Act*.

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

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

VENCorp means Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001*.

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, footnotes and schedule 2 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, 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 all terms, conditions and provisions of the offer or agreement;
- (g) 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;

- (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) 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;
- (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**

Date	Reason for variation
7 September 2005	Change of name of licensee-formally Edison Mission Energy Australia Limited and to provide the licence in the form approved by the Commission in the Review of Licences as published on 18 August 2004.
9 May 2018	Change of name of licensee – formerly IPM Australia Limited and inclusion of condition 6.2 (change of control).