



# Electricity Retail Licence

Newmont AP Power Pty Ltd

ERL13, Version 3, 19 September 2012

**Economic Regulation Authority**

WESTERN AUSTRALIA

## ***Electricity Industry Act 2004 (WA)***

### **Retail Licence**

Licensee Name: Newmont AP Power Pty Ltd  
ACN 133 305 307

Licensee Address: Level 1, 388 Hay Street  
SUBIACO WA 6008

Licence Area: The area set out in the map referred to in  
Schedule 1.

Commencement Date: 2 June 2009

Version Number: 3

Version Date: 19 September 2012



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Signed by a ~~delegate;~~  
member; ~~of~~  
the Chairman of the Economic Regulation Authority

Dated this 19<sup>th</sup> day September 2012

# Retail Licence

## 1 Definitions and Interpretation

1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

**Act** means the *Electricity Industry Act 2004* (WA).

**applicable legislation** means:

- (a) the *Act*; and
- (b) the *Regulations* and the *Codes* that apply to the *licensee*.

**approved scheme** means a scheme approved under section 92 of the *Act*.

**Authority** means the Economic Regulation Authority.

**business day** means a day which is not a Saturday, Sunday or a Public Holiday in Western Australia.

**Code** means:

- (a) the *Code of Conduct for the Supply of Electricity to Small Use Customers* or any such replacement Code approved pursuant to section 79 of the *Act*;
- (b) the *Electricity Industry Customer Transfer Code 2004*;
- (c) the *Electricity Networks Access Code 2004*;
- (d) the *Electricity Industry Metering Code 2005*;
- (e) the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*; and
- (f) a code prepared by the *Authority* or the Minister pursuant to section 39 of the *Act*.

**commencement date** means the date the *licence* was first granted by the *Authority* being the date specified in Schedule 1.

**connection point** has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

**customer** has the meaning given to that term in section 3 of the *Act*.

**default supplier** has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

**electricity** has the meaning given to that term in section 3 of the *Act*.

**electricity marketing agent** has the meaning given to that term in section 78 of the *Act*.

**electronic means** means:

- (a) the internet;
- (b) email, being:
  - (i) in relation to the *Authority*, the *Authority's* email address as notified to the *licensee*; and
  - (ii) in relation to the *licensee*, the email address specified in the licence application or other such email address as notified in writing to the *Authority*; or

(c) any other similar means,  
but does not include facsimile or telephone.

**expiry date** means the date specified in Schedule 1.

**individual performance standards** mean any standards prescribed by the Authority for an individual licensee pursuant to clause 13 of the licence.

**licence** means:

- (a) this document (excluding the title page and the second page of this document);
- (b) any Schedules to this document; and
- (c) any *individual performance standards* approved by the Authority pursuant to clause 13.

**licence area** is the area stated in Schedule 1 of this licence.

**licensee** means Newmont AP Power Pty Ltd, ACN 133 305 307.

**non-standard contract** has the meaning given to that term in section 47 of the Act.

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

**performance audit** means an audit of the effectiveness of measures taken by the licensee to meet the *performance criteria* in this licence.

**performance criteria** means:

- (a) the terms and conditions of the licence; and
- (b) any other relevant matter in connection with the *applicable legislation* that the Authority determines should form part of the *performance audit*.

**publish** in relation to a report or information means either:

- (a) posting the report or information on the licensee's website; or
- (b) sending the report or information to the Authority to be published on the Authority's website.

**Regulations** means:

- (a) *Electricity Industry (Access Code Enforcement) Regulations 2005*;
- (b) *Electricity Industry (Arbitrator and Board Funding) Regulations 2009*;
- (c) *Electricity Industry (Code of Conduct) Regulations 2005*;
- (d) *Electricity Industry (Customer Contracts) Regulations 2005*;
- (e) *Electricity Industry (Independent Market Operator) Regulations 2004*;
- (f) *Electricity Industry (Licence Conditions) Regulations 2005*;
- (g) *Electricity Industry (Licensing Fees) Regulations 2005*;
- (h) *Electricity Industry (Obligation to Connect) Regulations 2005*;
- (i) *Electricity Industry (Ombudsman Scheme) Regulations 2005*;
- (j) *Electricity Industry (Tariff Equalisation) Regulations 2006*;
- (k) *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; and
- (l) any regulations in force from time to time made pursuant to the Act.

**related body corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cwlth).

**reviewable decision** means a decision by the *Authority* pursuant to:

- (a) clause 13.2;
- (b) clause 14.2;
- (c) clause 14.4; or
- (d) clause 17.1,

of this *licence*.

**small use customer** has the same meaning as the meaning given to “customer” in section 47 of the *Act*.

**standard form contract** has the meaning given to that term in section 47 of the *Act*.

**supplier of last resort** has the meaning given to that term in section 69(1) of the *Act*.

**supply** has the meaning given to that term in section 3 of the *Act*.

**version date** means the date on which the *licence* was last amended pursuant to clause 10 or clause 11.

- 1.2 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that *applicable legislation*.

## 2 Grant of Licence

- 2.1 The *licensee* is granted a *licence* for the *licence area* to *supply electricity* to *customers* in accordance with the terms and conditions of this *licence*.

## 3 Term

- 3.1 This *licence* commences on the *commencement date* and continues until the earlier of:
- (a) the cancellation of the *licence* pursuant to clause 7 of this *licence*;
  - (b) the surrender of the *licence* pursuant to clause 8 of this *licence*; or
  - (c) the *expiry date*.

## 4 Fees

- 4.1 The *licensee* must pay the applicable fees in accordance with the *Regulations*.

## 5 Compliance

- 5.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

## 6 Transfer of Licence

- 6.1 This *licence* may be transferred only in accordance with the *Act*.

## **7 Cancellation of Licence**

7.1 This *licence* may be cancelled only in accordance with the *Act*.

## **8 Surrender of Licence**

8.1 The *licensee* may only surrender the *licence* pursuant to this clause 8.

8.2 If the *licensee* intends to surrender the *licence* the *licensee* must, by *notice* in writing to the *Authority*:

(a) set out the date that the *licensee* wishes the surrender of the *licence* to be effective; and

(b) set out the reasons why the *licensee* wishes to surrender the *licence*, including the reasons why it would not be contrary to the public interest for the surrender of the *licence* to be effective on the date set out in the *notice*.

8.3 Upon receipt of the *notice* from the *licensee* pursuant to clause 8.2, the *Authority* will *publish* the *notice*.

8.4 Notwithstanding clause 8.2, the surrender of the *licence* will only take effect on the later of the day that:

(a) the *Authority* publishes a notice of the surrender in the Western Australian Government Gazette, such date to be at the discretion of the *Authority*; and

(b) the *licensee* hands back the *licence* to the *Authority*.

8.5 The *licensee* will not be entitled to a refund of any fees by the *Authority*.

## **9 Renewal of Licence**

9.1 This *licence* may be renewed only in accordance with the *Act*.

## **10 Amendment of Licence on Application of the Licensee**

10.1 The *licensee* may apply to the *Authority* to amend the *licence* in accordance with the *Act*.

## **11 Amendment of Licence by the Authority**

11.1 Subject to any *applicable legislation*, the *Authority* may amend the *licence* at any time in accordance with this clause.

11.2 Before amending the *licence* under clause 11.1, the *Authority* must:

(a) provide the *licensee* with written *notice* of the proposed amendments under consideration by the *Authority*;

(b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and

(c) take into consideration those submissions.

11.3 This clause also applies to the substitution of the existing *licence*.

11.4 For avoidance of doubt, the *licensee* will not have to pay a fee for amendments under clause 11.

## 12 Accounting Records

- 12.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with standards issued by the Australian Accounting Standards Board or equivalent International Accounting Standards.

## 13 Individual Performance Standards

- 13.1 Performance standards are contained in *applicable legislation*.
- 13.2 The *Authority* may prescribe *individual performance standards* applying to the *licensee* in respect of the *licensee's* obligations under this *licence* or the *applicable legislation*.
- 13.3 Before approving any *individual performance standards* under this clause, the *Authority* will:
- (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
  - (b) allow 15 *business days* for the *licensee* to make submissions on the proposed *individual performance standards*; and
  - (c) take into consideration those submissions.
- 13.4 Once approved by the *Authority*, the *individual performance standards* are included as additional terms and conditions to this *licence*.

## 14 Performance Audit

- 14.1 The *licensee* must, unless otherwise notified in writing by the *Authority*, provide the *Authority* with a *performance audit* within 24 months after the *commencement date*, and every 24 months thereafter.
- 14.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *Authority's* standard audit guidelines.
- 14.3 The *licensee* may seek a review of any of the requirements of the *Authority's* standard audit guidelines in accordance with clause 19.1.
- 14.4 The *performance audit* must be conducted by an independent auditor approved by the *Authority*. If the *licensee* fails to nominate an auditor within one month of the date that the *performance audit* was due, or the auditor nominated by the *licensee* is rejected on two successive occasions by the *Authority*, the *Authority* may choose an independent auditor to conduct the *performance audit*.

## 15 Reporting a Change in Circumstances

- 15.1 The *licensee* must report to the *Authority*:
- (a) if the *licensee* is under external administration, as defined by the *Corporations Act 2001* (Cwlth), within 2 *business days* of such external administration occurring; or
  - (b) if the *licensee*:
    - (i) experiences a change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted; and
    - (ii) the change may materially affect the *licensee's* ability to perform its obligations under this *licence*,within 10 *business days* of the change occurring; or

- (c) if the:
  - (i) *licensee's* name;
  - (ii) *licensee's* ABN; or
  - (iii) *licensee's* address,change, within 10 *business days* of the change occurring.

## 16 Provision of Information

- 16.1 The *licensee* must provide to the *Authority* any information that the *Authority* may require in connection with its functions under the *Act* in the time, manner and form specified by the *Authority*.

## 17 Publishing Information

- 17.1 The *Authority* may direct the *licensee* to *publish*, within a specified timeframe, any information it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.
- 17.2 Subject to clause 17.3, the *licensee* must *publish* the information referred to in clause 17.1.
- 17.3 If the *licensee* considers that the information is confidential it must:
  - (a) immediately notify the *Authority*; and
  - (b) seek a review of the *Authority's* decision in accordance with clause 19.1.
- 17.4 Once it has reviewed the decision, the *Authority* will direct the *licensee* in accordance with the review to:
  - (a) *publish* the information;
  - (b) *publish* the information with the confidential information removed or modified; or
  - (c) not *publish* the information.

## 18 Notices

- 18.1 Unless otherwise specified, all *notices* must be in writing.
- 18.2 A *notice* will be regarded as having been sent and received:
  - (a) when delivered in person to the addressee; or
  - (b) 3 *business days* after the date of posting if the *notice* is posted in Western Australia; or
  - (c) 5 *business days* after the date of posting if the *notice* is posted outside Western Australia; or
  - (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
  - (e) if sent by *electronic means* when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee.

## 19 Review of the Authority's Decisions

- 19.1 The *licensee* may seek a review of a *reviewable decision* by the *Authority* pursuant to this *licence* in accordance with the following procedure:



- (a) the *licensee* shall make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *Authority*) of the decision; and
- (b) the *Authority* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

19.2 For avoidance of doubt, this clause does not apply to a decision of the *Authority* pursuant to the *Act*, nor does it restrict the *licensee's* right to have a decision of the *Authority* reviewed in accordance with the *Act*.

## 20 NOT USED

## 21 Approved Scheme

- 21.1 The *licensee* must not *supply electricity* to *small use customers* unless the *licensee* is:
- (a) a member of an *approved scheme*; and
  - (b) bound by, and compliant with, any decision or direction of the electricity ombudsman under the *approved scheme*.

## 22 NOT USED

## 23 Marketers

- 23.1 The *licensee* must ensure that an *electricity marketing agent* of the *licensee* complies with the *Code of Conduct for the Supply of Electricity to Small Use Customers*.
- 23.2 The *licensee* must report a breach by the *electricity marketing agent* of the applicable conditions of the *Code of Conduct for the Supply of Electricity to Small Use Customers* to the *Authority* within 3 *business days* of becoming aware of the breach.

## 24 Customer Contracts

- 24.1 Subject to the *Regulations*, the *licensee* must not *supply electricity* to a *small use customer* otherwise than under:
- (a) a *standard form contract*; or
  - (b) a *non-standard contract* that complies with the *Act*.
- 24.2 The *licensee* must, if directed by the *Authority*, review the *standard form contract* and submit to the *Authority* the results of that review within the time specified by the *Authority*.
- 24.3 The *licensee* must comply with any direction given by the *Authority* in relation to the scope, process or methodology of the review referred to in clause 24.2.

## 25 Amending the Standard Form Contract

- 25.1 The *licensee* may only amend the *standard form contract* with the *Authority's* approval.
- 25.2 The *licensee* may amend the *standard form contract* at any time by submitting to the *Authority*:
- (a) a proposed amendment to the *standard form contract*; or

(b) a proposed substituted *standard form contract*.

25.3 The *Authority* may:

- (a) approve the amendment to the *standard form contract* or substituted *standard form contract*; or
- (b) specify the amendments the *licensee* must make to the amended or substituted *standard form contract* before the *Authority* will amend the *standard form contract*,

and notify the *licensee* of its decision within a reasonable time.

25.4 The *Authority* may, at any time, by *notice* in writing, direct the *licensee* to amend the *standard form contract* by specifying:

- (a) the amendments to be made to the *standard form contract*, and
- (b) the latest date at which the amendments will come into force.

## **26 Directions by the Authority**

26.1 The *licensee* must comply with any direction given by the *Authority* pursuant to section 53 of the *Act*.

## **27 Supplier of Last Resort**

27.1 If the *licensee* is designated a *supplier of last resort* under the *Act*, the *licensee* must perform the functions of the *supplier of last resort*.

## **28 Notification of Default Supply**

28.1 Where the *licensee* becomes aware of a *customer* taking a *supply of electricity* that is deemed to be supplied under the *licensee's standard form contract* in accordance with the *Electricity Industry (Customer Contracts) Regulations 2005*, the *licensee* must, within 5 days after becoming aware, notify the *customer* in writing:

- (a) that the *licensee* is the *default supplier* for that *connection point*, and
- (b) the effect of regulation 37 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

## Schedule 1 – Licence Details

### 1 Licence Area

The *licence area* is the area as set out in plan ERA-EL-117(A).

### 2 Commencement Date

2 June 2009

### 3 Expiry Date

1 June 2024

## **Schedule 2 – Additional Licence Clauses**

**Amendment Record Sheet:**

<b>Version Date</b>	<b>Description of Amendment</b>
13 January 2011	Electricity Licence Review 2010 amendment by substitution.
19 September 2012	Amendment to licence area map.