



# Electricity Generation Licence

NewGen Power Kwinana Pty Ltd

EGL3, Version 3, 13 January 2011

**Economic Regulation Authority**

WESTERN AUSTRALIA

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

### **Generation Licence**

Licensee Name: NewGen Power Kwinana Pty Ltd  
ACN 116 827 546

Licensee Address: The Chifley Tower  
Level 39, 2 Chifley Square  
SYDNEY NSW 2000

Description of Generating Works: A 160 MW gas turbine and a 160 MW steam turbine.

Nameplate Capacity of Generating Works: 320 MW

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

Commencement Date: 22 February 2006

Version Number: 3

Version Date: 13 January 2011

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

Dated this 13<sup>th</sup> day January 2011

# Generation 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*.

**asset management system** means the measures that are to be taken by the *licensee* for the proper maintenance, expansion or reduction of the *generating works*.

**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.

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

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

**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) the 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 NewGen Power Kwinana Pty Ltd, ACN 116 827 546.

**licensee's assets** means the *licensee's* distribution system, transmission system or *generating works* (as the case may be).

**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*.

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

**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;
- (d) clause 17.1;
- (e) clause 20.5; or
- (f) clause 20.7,

of this *licence*.

**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 construct and *operate generating works* or *operate existing generating works* 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;
    - (iii) *licensee's* address;

- (iv) description of the *generating works*; or
- (v) nameplate capacity of the *generating works*,  
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 Asset Management System**

- 20.1 The *licensee* must provide for an *asset management system* in respect of the *licensee's assets*.
- 20.2 The *licensee* must notify the *Authority* of the details of the *asset management system* within 5 *business days* from the later of:
  - (a) the *commencement date*; and
  - (b) the completion of construction of the *generating works*.
- 20.3 The *licensee* must notify the *Authority* of any substantial change to the *asset management system* within 10 *business days* of such change.
- 20.4 The *licensee* must provide the *Authority* with a report by an independent expert, acceptable to the *Authority*, as to the effectiveness of the *asset management system* not less than once in every period of 24 months calculated from the *commencement date* (or any longer period that the *Authority* allows by *notice* in writing).
- 20.5 The *licensee* must comply, and must require the *licensee's* expert to comply, with the *Authority's* standard audit guidelines.
- 20.6 The *licensee* may seek a review of any of the requirements of the *Authority's* standard audit guidelines dealing with the *asset management system* in accordance with clause 19.1.
- 20.7 The review of the *asset management system* must be conducted by an independent expert approved by the *Authority*. If the *licensee* fails to nominate an independent expert within one month of the date that the review of the *asset management system* was due, or the independent expert nominated by the *licensee* is rejected on two successive occasions by the *Authority*, the *Authority* may choose an independent expert to conduct the review of the *asset management system*.

## Schedule 1 – Licence Details

### 1 Licence Area

The *licence area* is the area as set out in plan ERA-EL-068.

### 2 Commencement Date

22 February 2006

### 3 Expiry Date

21 February 2036

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

**Amendment Record Sheet:**

<b>Version Date</b>	<b>Description of Amendment</b>
29 January 2009	Change to customer definition.
13 January 2011	Electricity Licence Review 2010 amendment by substitution.