



# Electricity Retail Licence

BHP Billiton Nickel West Pty Ltd

ERL2, Version 4, 13 January 2011

**Economic Regulation Authority**

WESTERN AUSTRALIA

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

### **Retail Licence**

Licensee Name:	BHP Billiton Nickel West Pty Ltd ACN 004 184 598
Licensee Address:	Central Park 152-158 St Georges Tce PERTH WA 6000
Licence Area:	The area set out in the map referred to in Schedule 1.
Commencement Date:	24 March 2006
Version Number:	4
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

# 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 BHP Billiton Nickel West Pty Ltd, ACN 004 184 598.

**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-070.

### 2 Commencement Date

24 March 2006

### 3 Expiry Date

23 March 2021

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

**Amendment Record Sheet:**

<b>Version Date</b>	<b>Description of Amendment</b>
15 December 2006	Amend the title of the Electricity Retail Licence 2 (ERL2) from WMC Resources Ltd trading as Nickel West CAN 004 184 598 to BHP Billiton Nickel West Pty Ltd CAN 004 184 598.
29 January 2009	Change to customer definition.
13 January 2011	Electricity Licence Review 2010 amendment by substitution.