



Electricity Distribution Licence

TEC Desert Pty Ltd & TEC Desert No. 2 Pty Ltd
(t/a Southern Cross Energy Partnership)

EDL3, Version 4, 13 January 2011

Economic Regulation Authority

WESTERN AUSTRALIA

Electricity Industry Act 2004 (WA)

Distribution Licence

| | |
|-------------------------------------|---|
| Licensee Name: | TEC Desert Pty Ltd & TEC Desert No. 2 Pty Ltd (t/a Southern Cross Energy Partnership) ABN 79 271 003 656 |
| Licensee Address: | Level 14, Parmelia House 191 St Georges Terrace PERTH WA 6000 |
| Description of Distribution System: | The distribution system within the Goldfields-Esperance and Mid-West Local Government Areas associated with mining operations at Mt Keith, Leinster, Kalgoorlie and Kambalda. |
| Length of Distribution System: | 187 km |
| Licence Area: | The area set out in the map referred to in Schedule 1. |
| Commencement Date: | 30 June 2006 |
| Version Number: | 4 |
| Version Date: | 13 January 2011 |

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

Dated this 13th day January 2011

Distribution 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*.

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

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*.

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

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

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.

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 TEC Desert Pty Ltd & TEC Desert No. 2 Pty Ltd (t/a Southern Cross Energy Partnership), ABN 79 271 003 656.

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*.

small use customer has the same meaning as the meaning given to “customer” in section 47 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 construct and *operate* a new *distribution system* or *operate* an existing *distribution system* 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 *distribution system*; or
 - (v) length of the *distribution system*,
changes, 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 *distribution system*.
- 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*.

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 Determination of Default Supplier

- 22.1 The *licensee* must determine, from time to time, the *default supplier* for each *connection point* that connects to a *distribution system* operated by the *licensee*.

Schedule 1 – Licence Details

1 Licence Area

The *licence area* is the area as set out in plan ERA-EL-109B.

2 Commencement Date

30 June 2006

3 Expiry Date

29 June 2036

Schedule 2 – Additional Licence Clauses

Amendment Record Sheet:

| Version Date | Description of Amendment |
|---------------------|---|
| 4 December 2006 | Replaced the distribution maps ERA-EL-109/1-A and ERA-EL-109/2-A with ERA-EL-109-B. |
| 29 January 2009 | Change to customer definition. |
| 13 January 2011 | Electricity Licence Review 2010 amendment by substitution. |