



Electricity Retail Licence

EDL Pilbara Pty Ltd

ERL16, Version 2, 1 July 2015

Economic Regulation Authority

WESTERN AUSTRALIA

ELECTRICITY INDUSTRY ACT 2004 (WA)

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|--------------------|---|
| Licensee Name: | EDL Pilbara Pty Ltd ABN 35 083 747 086 |
| Licence Area: | The area set out in the map referred to in Schedule 1. |
| Licence Number: | ERL16 |
| Commencement Date: | 27 August 2011 |
| Version Number: | 2 |
| Version Date: | 1 July 2015 |
| Expiry Date: | 26 August 2026 |

Signed by the Chief Executive Officer
of the Economic Regulation Authority
1 July 2015

ELECTRICITY 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 Industry (Metering) Code 2012*; and
- (d) the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.

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*.

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*.

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 EDL Pilbara Pty Ltd, ABN 35 083 747 086.

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) *Economic Regulation Authority (Licensing Funding) Regulations 2014*;
- (b) *Electricity Industry (Code of Conduct) Regulations 2005*;
- (c) *Electricity Industry (Customer Contracts) Regulations 2005*;
- (d) *Electricity Industry (Licence Conditions) Regulations 2005*;
- (e) *Electricity Industry (Obligation to Connect) Regulations 2005*; and
- (f) *Electricity Industry (Ombudsman Scheme) Regulations 2005*.

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*.

transmission system 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 sell *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 and charges 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*, in the manner and form prescribed by the

Authority, specified information on any matter relevant to the operation or enforcement of the *licence*, the operation of the licensing scheme provided for in Part 2 of the *Act*, or the performance of the *Authority's* functions under that Part.

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:

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- (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**
- 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 Determination of Default Supplier**
- 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 *small use 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 *small use 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*.

29 Priority Restoration Register

Not Used

Schedule 1 – Licence Details

1 Licence Area

1.1 The *licence area* is the area as set out in plan ERA-EL-127.

2 Commencement Date

2.1 27 August 2011

3 Expiry Date

3.1 26 August 2026

4 Activities authorised by this licence

4.1 The *licensee* is authorised by this *licence* to sell *electricity* to customers excluding *small use customers*.

Schedule 2 – Additional Licence Clauses

1. Sale to small use customers

- 1.1 Where the *licensee* intends to sell *electricity* to *small use customers* after the commencement of this *licence*, the *licensee* must apply to the *Authority* to amend the *licence* and submit with that application a proposed *standard form contract* for the *Authority's* approval.

2. Compliance with the Electricity Customer Transfer Code 2004

- 2.1 Despite clause 5.1 of the *licence*, the *licensee* is not required to comply with the *Electricity Industry Customer Transfer Code 2004* as long as the *licensee* is the only retailer selling *electricity* transported through the *distribution system* or *transmission system* (as the case may be).
- 2.2 The *licensee* must notify the *Authority* within 10 business days of the *licensee* becoming aware that there is more than one retailer selling *electricity* transported through the *distribution system* or *transmission system* that is also being used by the *licensee*.

Schedule 3 – Licence Area Maps

Amendment Record Sheet

| Version Date | Description of Amendment |
|----------------|---|
| 27 August 2011 | Grant of Electricity Retail Licence 16. |
| 1 July 2015 | Electricity Licences Review 2015 amendment by substitution. |