



Electricity Retail Licence

BHP Billiton Nickel West Pty Ltd

ERL2, Version 8, 13 July 2017

Economic Regulation Authority

WESTERN AUSTRALIA

ELECTRICITY INDUSTRY ACT 2004 (WA)

Licensee Name:	BHP Billiton Nickel West Pty Ltd ACN 004 184 598
Licence Area:	The area set out in the maps referred to in Schedule 1
Licence Number:	ERL2
Commencement Date:	24 March 2006
Version Number:	8
Version Date:	13 July 2017
Expiry Date:	23 March 2021

The Chair of the Economic Regulation Authority

13 July 2017

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*.

distribution system 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) *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:
- (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 *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*.

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 plans ERA-EL-070/2 and ERA-EL-071(B)

2 Commencement Date

- 2.1 24 March 2006

3 Expiry Date

- 3.1 23 March 2021

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
15 December 2006	Amend the title of the Electricity Retail Licence 2 (ERL2) from WMC Resources Ltd trading as Nickel West ACN 004 184 598 to BHP Billiton Nickel West Pty Ltd ACN 004 184 598.
29 January 2009	Change to customer definition.
13 January 2011	Electricity Licence Review 2010 amendment by substitution.
3 December 2012	ERA amendment by substitution to update reference to map ERA-EL-070(B).
1 July 2015	Electricity Licences Review 2015 amendment by substitution
7 July 2016	Licence amended by substitution to : <ul style="list-style-type: none"> • reinstate reference to Plan ERA-EL-071(B) in Item 1 of Schedule 1; and • revise licence area to include Agnew as shown in plan ERA-EL-070(C)
13 July 2017	Licence amended by substitution. Schedule 1 amended to replace licence operating area map number ERA-EL-070(C) with Northern Goldfields Retail map number ERA-EL-070/2.