



Electricity Retail Licence

Clear Energy Pty Ltd

ERL14, Version 5, 1 July 2018

Economic Regulation Authority

WESTERN AUSTRALIA

ELECTRICITY INDUSTRY ACT 2004 (WA)

Licensee Name: Clear Energy Pty Ltd
ABN 93 129 057 030

Licence Area: The area set out in the plan referred to in clause 2.5.

Licence Number: ERL14

Commencement Date: 26 May 2010

Version Number: 5

Version Date: 1 July 2018

Expiry Date: 25 May 2025

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

1 July 2018

Index

1. DEFINITIONS AND INTERPRETATION	4
1.1 Definitions	4
1.2 Interpretation	6
2. LICENCE AUTHORISATION	6
2.1 Activities authorised under this licence	6
2.2 Commencement date	6
2.3 Expiry date	7
2.4 Term	7
2.5 Licence area	7
3. LICENCE ADMINISTRATION	7
3.1 Amendment of licence by the licensee	7
3.2 Amendment of licence by the ERA	7
3.3 Transfer of licence	8
3.4 Renewal of licence	8
3.5 Cancellation of licence	8
3.6 Surrender of licence	8
3.7 Notices	8
3.8 Publishing information	9
3.9 Review of the ERA's decisions	9
4. GENERAL LICENCE OBLIGATIONS	9
4.1 Compliance with applicable legislation	9
4.2 Fees	10
4.3 Accounting records	10
4.4 Reporting a change in circumstances	10
4.5 Provision of information	10
5. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS	10
5.1 Asset management system	10
5.2 Individual performance standards	11
5.3 Performance audit	11
6. CUSTOMERS	11
6.1 Approved Scheme	11
6.2 Determination of Default Supplier	11
6.3 Marketers	12
6.4 Customer Contracts	12
6.5 Amending the Standard Form Contract	12
6.6 Directions by the ERA to amend Standard Form Contract	12
6.7 Supplier of Last Resort	13
6.8 Notification of Default Supply	13
6.9 Priority Restoration Register	13
Schedule 1 – Additional Licence Clauses	14
Schedule 2 – Licence Area Plans	15

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 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*.

approved scheme means a scheme approved under section 92 of the *Act*.

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 2018*;
- (b) the *Electricity Industry (Customer Transfer) Code 2016*;
- (c) the *Electricity Industry (Metering) Code 2012*;
- (d) Not Used

commencement date means the date the *licence* was first granted by the *ERA* being the date specified in clause 2.2.

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 *ERA*, the *ERA*'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 *ERA*; or

(iii) any other similar means,

but does not include facsimile or telephone.

ERA means the Economic Regulation Authority.

expiry date means the date specified in clause 2.3.

individual performance standards mean any standards prescribed by the *ERA* for an individual *licensee* pursuant to clause 5.2 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 *ERA* pursuant to clause 5.2.

licence area is the area stated in clause 2.5 of this *licence*.

licensee means Clear Energy Pty Ltd, ABN 93 129 057 030.

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 *ERA* 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 *ERA* to be published on the *ERA'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) Not Used
- (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 (Cwth)*.

reviewable decision means a decision by the *ERA* pursuant to:

- (a) clause 3.8.3;
- (b) Not Used
- (c) Not Used
- (d) clause 5.2.2;
- (e) clause 5.3.2; or
- (f) clause 5.3.4,

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 3.1 or clause 3.2.

1.2 Interpretation

- 1.2.1 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment, replacement or re-enactment of that *applicable legislation*.

2. LICENCE AUTHORISATION

2.1 Activities authorised under this licence

- 2.1.1 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*.

2.2 Commencement date

- 2.2.1 26 May 2010

2.3 Expiry date

2.3.1 25 May 2025

2.4 Term [Section 15 of the Act]

2.4.1 This *licence* commences on the *commencement date* and continues until the earlier of:

- (a) the cancellation of the *licence* pursuant to clause 3.5 of this *licence*;
- (b) the surrender of the *licence* pursuant to clause 3.6 of this *licence*; or
- (c) the *expiry date*.

2.5 Licence area

2.5.1 The *licence area* is set out in plan(s):

ERA-EL-118(A)

2.5.2 The *licence area* plan(s) is provided in Schedule 2.

3. LICENCE ADMINISTRATION

3.1 Amendment of licence by the licensee [Section 21 of the Act]

3.1.1 The *licensee* may apply to the *ERA* to amend the *licence* in accordance with the *Act*.

3.2 Amendment of licence by the ERA [Section 22 of the Act]

3.2.1 Subject to any *applicable legislation*, the *ERA* may amend the *licence* at any time in accordance with this clause.

3.2.2 Before amending the *licence* under clause 3.2.1, the *ERA* must:

- (a) provide the *licensee* with written *notice* of the proposed amendments under consideration by the *ERA*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

3.2.3 This clause also applies to the substitution of the existing *licence*.

3.2.4 For avoidance of doubt, the *licensee* will not have to pay a fee for amendments under clause 3.2.1.

**3.3 Transfer of licence
[Section 18 of the Act]**

3.3.1 This *licence* may be transferred only in accordance with the *Act*.

**3.4 Renewal of licence
[Section 16 of the Act]**

3.4.1 This *licence* may be renewed only in accordance with the *Act*.

**3.5 Cancellation of licence
[Section 35 of the Act]**

3.5.1 This *licence* may be cancelled only in accordance with the *Act*.

**3.6 Surrender of licence
[Schedule 1 of the Act]**

3.6.1 The *licensee* may only surrender the *licence* pursuant to this clause 3.6.

3.6.2 If the *licensee* intends to surrender the *licence* the *licensee* must, by *notice* in writing to the *ERA*:

- (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*.

3.6.3 Upon receipt of the *notice* from the *licensee* pursuant to clause 3.6.2, the *ERA* will publish the *notice*.

3.6.4 Notwithstanding clause 3.6.2, the surrender of the *licence* will only take effect on the later of the day that:

- (a) the *ERA* publishes a *notice* of the surrender in the Western Australian Government Gazette, such date to be at the discretion of the *ERA*; and
- (b) the *licensee* hands back the *licence* to the *ERA*.

3.6.5 The *licensee* will not be entitled to a refund of any fees by the *ERA*.

3.7 Notices

3.7.1 Unless otherwise specified, all *notices* must be in writing.

3.7.2 A *notice* will be regarded as having been sent and received:

- (a) when delivered in person to the addressee; or
- (b) three *business days* after the date of posting if the *notice* is posted in Western Australia; or
- (c) five *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.

3.8 Publishing information

3.8.1 The *ERA* 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*.

3.8.2 Subject to clause 3.8.3, the *licensee* must *publish* the information referred to in clause 3.8.1.

3.8.3 If the *licensee* considers that the information is confidential it must:

- (a) immediately notify the *ERA*; and
- (b) seek a review of the *ERA*'s decision in accordance with clause 3.9.

3.8.4 Once it has reviewed the decision, the *ERA* 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.

3.9 Review of the ERA's decisions

3.9.1 The *licensee* may seek a review of a *reviewable decision* by the *ERA* 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 *ERA*) of the decision; and
- (b) the *ERA* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

3.9.2 For avoidance of doubt, this clause does not apply to a decision of the *ERA* pursuant to the *Act*, nor does it restrict the *licensee*'s right to have a decision of the *ERA* reviewed in accordance with the *Act*.

4. GENERAL LICENCE OBLIGATIONS

4.1 Compliance with applicable legislation

4.1.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

4.2 Fees

4.2.1 The *licensee* must pay the applicable fees and charges in accordance with the *Regulations*.

4.3 Accounting records [Schedule 1 of the Act]

4.3.1 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.

4.4 Reporting a change in circumstances

4.4.1 The *licensee* must report to the *ERA*:

(a) if the *licensee* is under external administration as defined by the *Corporations Act 2001 (Cwth)* 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,

changes, within 10 *business days* of the change occurring.

4.5 Provision of information [Schedule 1 of the Act]

4.5.1 The *licensee* must provide to the *ERA*, in the manner and form described by the *ERA*, *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 *ERA's* functions under that Part.

5. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS

5.1 Asset management system [Section 14 of the Act]

Not Used

5.2 Individual performance standards

- 5.2.1 Performance standards are contained in *applicable legislation*.
- 5.2.2 The *ERA* may prescribe *individual performance standards* applying to the *licensee* in respect of the *licensee's* obligations under this *licence* or the *applicable legislation*.
- 5.2.3 Before approving any *individual performance standards* under this clause, the *ERA* 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.
- 5.2.4 Once approved by the *ERA*, the *individual performance standards* are included as additional terms and conditions to this *licence*.

5.3 Performance audit [Section 13 of the Act]

- 5.3.1 The *licensee* must, unless otherwise notified in writing by the *ERA*, provide the *ERA* with a *performance audit* within 24 months after the *commencement date*, and every 24 months thereafter.
- 5.3.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *ERA's* standard audit guidelines.
- 5.3.3 The *licensee* may seek a review of any of the requirements of the *ERA's* standard audit guidelines in accordance with clause 3.9.
- 5.3.4 The *performance audit* must be conducted by an independent auditor approved by the *ERA*. 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 *ERA*, the *ERA* may choose an independent auditor to conduct the *performance audit*.

6. CUSTOMERS

6.1 Approved Scheme [Section 101 of the Act]

- 6.1.1 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*.

6.2 Determination of Default Supplier

Not Used

6.3 Marketers

6.3.1 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 2018*.

6.4 Customer Contracts [Section 54 of the Act]

6.4.1 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*.

6.4.2 The *licensee* must, if directed by the *ERA*, review the *standard form contract* and submit to the *ERA* the results of that review within the time specified by the *ERA*.

6.4.3 The *licensee* must comply with any direction given by the *ERA* in relation to the scope, process or methodology of the review referred to in clause 6.4.2.

6.5 Amending the Standard Form Contract [Section 52 of the Act]

6.5.1 The *licensee* may only amend the *standard form contract* with the *ERA*'s approval.

6.5.2 The *licensee* may amend the *standard form contract* at any time by submitting to the *ERA*:

- (a) a proposed amendment to the *standard form contract*; or
- (b) a proposed substituted *standard form contract*.

6.5.3 The *ERA* 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 *ERA* will amend the *standard form contract*,

and notify the *licensee* of its decision within a reasonable time.

6.5.4 The *ERA* 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.

6.6 Directions by the ERA to amend Standard Form Contract [Section 53 of the Act]

6.6.1 The *licensee* must comply with any direction given by the *ERA* pursuant to section 53 of the *Act*.

**6.7 Supplier of Last Resort
[Section 76 of the Act]**

6.7.1 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*.

6.8 Notification of Default Supply

6.8.1 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 five 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*.

6.9 Priority Restoration Register

Not Used

Schedule 1 – Additional Licence Clauses

(Not Used)

Schedule 2 – Licence Area Plans

Amendment Record Sheet

Version Date	Description of Amendment
13 January 2011	Electricity Licence Review 2010 amendment by substitution.
19 September 2012	Amendment to licence area map.
1 July 2015	Electricity Licence Review 2015 amendment by substitution.
1 July 2018	Electricity Licence Review 2018 amendment by substitution.