

**power & water expertise**

28 July 2005

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File Ref: D2642.2

Economic Regulation Authority  
PO Box 8469  
Perth Business Centre WA 6849  
Attention: Mr Lyndon Rowe

Dear Mr Rowe

## GENERATION LICENSE REQUIREMENTS

I write to seek assistance and a ruling as to the conditions for a Generation Licence for certain project types and in particular the Exmouth Power Project that we are undertaking with Western Power.

From my reading of the Electricity Industry Act 2004, I believe that the Economic Regulation Authority (ERA) has the power to determine the conditions, and therefore, the level of information needed for any licence. ERA's judgement in this context is to be conditioned by the "public interest", Section 9 (1), and must take into account areas referred to in section 8 (5).

This letter is to point out circumstances which I do not believe warrant overview, or at least minimal overview, by ERA. Two specific examples are:

### Exmouth Power Project

The Exmouth Power Project concerns the construction and 18 year operation of a power station to supply all of Western Power's electricity requirements for its Exmouth Region Power System.

Exmouth Power Station Pty Ltd (ExPS), a wholly owned subsidiary of WorleyParsons, is the special purpose vehicle undertaking the project and the counterparty to the Power Purchase Agreement with WPC.

Extensive financial and technical due diligence has been undertaken by WPC, initially in association with the Office of Energy, to confirm the soundness of the proposed solution and the substance of the counterparty; ExPS. In addition, as a portion of the development and construction costs are funded by an external financier, extensive financial and technical due diligence has been by the financier to determine the "bankability" of the project.

The Power Purchase Agreement is a performance based contract that details the quality and reliability of the electricity supplied and the remedies available to WPC in the event that ExPS fails to perform.

### **Extension Hill Magnetite Project (EHMP)**

The Extension Hill Magnetite Project concerns the construction and operation of an iron ore mine approximately 290 km north east of Perth. A project is being developed to provide power at the mine site under an Independent Power Producer arrangement. It is anticipated that, like the Exmouth Power Project, a special purpose vehicle will be created and wholly owned by WorleyParsons, and that entity will be the counterparty to the Power Purchase Agreement with the mining company.

Currently the scope of the power portion of the project involves the delivery of up to 80MW of installed capacity, a 207 km 8 inch high pressure gas pipeline and related infrastructure. The total project cost is likely to be between Au\$110m and Au\$130m.

A performance based contract will be entered into by the parties, with key provisions concerning reliability and quality of supply and remedies for failure to perform.

My concern is motivated by the burdensome and somewhat intrusive information requirements for these types of projects as listed in the ERA's "Electricity Industry Guideline: Information for Licence Applicants" and the "Generation Licence" documents. Furthermore, I suggest that the mandatory reporting for these projects is not supported by the "public interest" test.

I acknowledge that under Section 7 (1) a power station cannot be build and/or operated without a Licence. The essence of my proposition is that where two equal or substantial parties enter into a contract for the supply of power, particularly where 100% of the capacity of the generating station is being sold to a single party, the role of the state should be diminished.

I would suggest that ERA's assessment of the detail needed in the licence application and the conditions included in any licence should be determined by the nature of the commercial arrangements between the contracting parties and the extent to which the "public" are a stakeholder in the proposed electricity supply.

In the case of the Exmouth Power Project, the party taking the electricity, WPC, is a single substantial and competent party that has entered into commercial arrangements sufficient to protect its continuity of supply to its customers. WPC's customers are further protected by the requirement that WPC holds an Integrated Regional Licence.

With regard to the Extension Hill Magnetite Project, there is a single off-taker of electricity; a private company using 100% of the power station for its business. The power station will not be connected to the SWIS, nor will it supply other customers. As such, there are no details about the electricity supply that are "in the public interest".

The Act has some mandatory reporting areas such as Sections 13 (performance audit) and 14 (asset management system). In the case of Section 13, ERA, under Section 11, can apply no

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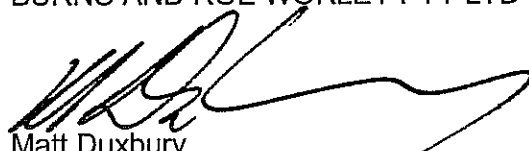
performance criteria (if not in the public interest) and therefore an audit will be a "nil issues audit". The same can be proposed in the case of Section 14 as the asset management plan can be very minimal and the conditions of the licence should be as little as requiring preparation and upkeep of a maintenance of the schedule.

I note that under Section 11 (1) of the Act, ERA may determine conditions of any licence and at its discretion may include any matter listed in Schedule 1.

I would be pleased to meet and discuss these project examples as a basis to understand ERA's interpretation of the Electricity Industry Act 2004. I contend that the detailed information indicated as necessary for the application of a Generation Licence is in many cases intrusive, excessive and serves no public interest. To put such a comprehensive information set together is no small task and the ongoing reporting is again unwarranted in many cases.

I hope that you are able to help. I am willing to meet to discuss this at any time.

Yours sincerely  
BURNS AND ROE WORLEY PTY LTD



Matt Duxbury  
Business Development Manager