



Economic Regulation Authority

Western Australia

**Final Decision on the Proposed Transfer
of GDL 6 from BRW Power Generation
(Esperance) Pty Ltd to Esperance Power
Station Pty Ltd**

ECONOMIC REGULATION AUTHORITY

January 2005

FINAL DECISION

1. On 29 October 2004, BRW Power Generation (Esperance) Pty Ltd lodged an application to the Economic Regulation Authority (**Authority**) to transfer Gas Distribution Licence 6 (**GDL 6**) to a related company, Esperance Power Station Pty Ltd (**the Application**).
2. The Application was made by Esperance Power Station Pty Ltd (**the Applicant**).
3. The Application was made pursuant to section 11R of the *Energy Coordination Act 1994*.
4. The Authority consulted upon the proposed transfer of GDL 6 in accordance with the *Energy Coordination Regulations 2004*.
5. Pursuant to section 11S of the *Energy Coordination Act 1994*, the Authority approves the transfer of GDL 6 from BRW Power Generation (Esperance) Pty Ltd to the Applicant.

STATEMENT OF REASONS

6. Section 11S of the *Energy Coordination Act 1994* (**the Act**) sets out the factors governing the Authority's decision to grant, renew or transfer a gas licence. Subsections (1) and (2) are reproduced below:
 - (1) Subject to section 11K, the Authority must grant, renew or approve the transfer of a licence if the Authority is satisfied that the applicant —
 - (a) has, and is likely to retain; or
 - (b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,

the financial and technical resources to undertake the activities authorised, or to be authorised, by the licence.
 - (2) The Authority must take all reasonable steps to make a decision in respect of an application for —
 - (a) the grant or renewal of a licence; or
 - (b) approval to transfer a licence,

within 90 days after the application is made.
7. The Authority is required to undertake public consultation in accordance with the procedure provided for in the *Energy Coordination Regulations 2004* (**the Regulations**) before it makes a decision under section 11R of the Act on an application to transfer a licence.

8. Following receipt of the Application, the Authority prepared a notice and Issues Paper on the proposed transfer of GDL 6.
9. Both the notice and Issues Paper, as well as a copy of GDL 6, are available from the Authority's website.
10. As required by regulation 5(1) of the *Energy Coordination Regulations 2004*, the Authority invited the Coordinator of Energy and Director of Energy Safety to make submissions on the Application.
11. Both the Coordinator of Energy and the Director of Energy Safety made submissions to the Authority and neither raised any objection to the proposed transfer of GDL 6 to Esperance Power Station Pty Ltd.
12. The Authority invited members of the public to make submissions upon the transfer:
 - by publishing the notice and Issues Paper upon the Authority's website;
 - by sending an email to each person who had notified the Authority of their interest in receiving emails relating to the Authority's activities in gas; and
 - by advertising in the *Esperance Express* (4 November 2004).
13. No submissions were received from members of the public.
14. The Authority engaged consultants to examine the financial capacity of Esperance Power Station Pty Ltd to undertake the activities authorised by the licence and sought advice from the Director of Energy Safety regarding the technical capability of the Applicant.
15. The Authority's consultants and advisers concluded that the Applicant met the requirements imposed by section 11S(1) of the Act.
16. The Authority has considered the Application, the consultants' and advisers' reports and the public interest requirements set out in section 11K of the Act and concluded that it is satisfied that the requirements of section 11S(1) have been met by the Applicant.
17. In addition, the Minister for Energy did not advise the Authority that the matter to which the Application relates was, in his opinion, a matter of significant public interest (regulation 7(2) of the Regulations). Consequently the Authority is not required to issue a draft decision.
18. The Authority has therefore decided to issue a final decision to approve the transfer of GDL 6 from BRW Power Generation (Esperance) Pty Ltd to Esperance Power Station Pty Ltd on the terms and conditions of GDL 6.
19. As required by section 11T of the Act, the Authority will publish notice of its approval of the Application in the *Government Gazette* as soon as is practicable.