

Electricity Industry Act 2004 (WA)
Energy Coordination Act 1994 (WA)
Water Services Licensing Act 1995 (WA)

Electricity, Gas and Water Licences: Application Guideline and Forms

June 2008

Economic Regulation Authority

 WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at www.era.wa.gov.au. For further information, contact

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Important Notice

The Authority is committed to best practice regulation, one that ensures that service standards to customers are maintained while minimising regulatory burden and compliance costs on business. The Authority is committed to work in an independent, flexible and accountable manner. Accordingly, licence applicants are encouraged to contact the Authority regarding their informational requirements throughout the application process.

This document has been compiled in good faith by the Economic Regulation Authority (Authority). It summarises information about applying for electricity, gas and water licences. This document is not a substitute for legal advice. No person or organisation should act on the basis of any matter contained in this document without obtaining appropriate professional advice.

The Authority and its staff members make no representation or warranty, express or implied, as to the accuracy, completeness, reasonableness or reliability of the information contained in this document, and accept no liability, jointly or severally, for any loss or expense of any nature whatsoever (including consequential loss) arising directly or indirectly from any making available of this document, or the inclusion in it or omission from it of any material, or anything done or not done in reliance on it, including in all cases, without limitation, loss due in whole or part to the negligence of the Authority and its employees. This Important Notice has effect, subject to the *Trade Practices Act 1974 (Commonwealth)* and the *Fair Trading Act 1987 (WA)*, if applicable, to the fullest extent permitted by law.

The summaries of the *Electricity Industry Act 2004 (WA)*, the *Energy Coordination Act 1994 (WA)*, the *Water Services Licensing Act 1995 (WA)* and other legislation or regulations relevant to the supply of electricity, gas or water in this document do not contain all material terms of those laws. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws. The summaries are not a substitute for legal advice.

The scope of information outlined in this document as being required for an application does not prevent or limit the Authority in any way from requesting any additional information for the purposes of assessing a licence application. This document is a guide only and should not be treated as definitive.

Prior to submitting a licence application to the Authority, it is recommended that potential applicants contact the Authority's Licensing, Monitoring and Customer Protection Division on (08) 9213 1900 to determine the extent of information required to support their application.

For the purposes of transparency and accountability, copies of licence applications and licences are made available for inspection by the public. Members of the public may arrange to inspect the licence by contacting the Authority. Electronic copies may also be made available on the Authority's website at <http://www.era.wa.gov.au>. The Authority will provide a public notice on the Authority's website of licence applications and approvals.

The Authority is bound by its obligations relating to confidential information in the *Public Sector Management Act 1994 (WA)* and the *Economic Regulation Authority Act 2003 (WA)*.

Accordingly, the Authority has a very strict privacy policy regarding sensitive commercial and business information that is provided to the Authority as part of an electricity, gas and water supply application or pursuant to the terms of a licence.

The Authority is bound by the *Freedom of Information Act 1992 (WA)* ('FOI Act'). Section 33 of the FOI Act requires the Authority to consult with a party who has provided it with commercial or business information to determine whether the Authority should provide access to the material.

Further, the Authority will not provide information to an applicant under the FOI Act if the disclosure:

- would reveal trade secrets of a person;
- would reveal information (other than trade secrets) that has a commercial value to a person and disclosure could reasonably be expected to destroy or diminish that commercial value; or
- would reveal information about the business, professional, commercial or financial affairs of a person and disclosure could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

Finally, under the FOI Act, if the Authority resolves to release information containing commercial or business interests of a party than that party can ask the Authority to review the decision internally or may also have the decision reviewed by the Information Commissioner. The Information Commissioner's contact details are:

The Information Commissioner
Freedom of Information Unit
The Department of Premier and Cabinet
21st Floor
197 St Georges Terrace
PERTH WA 6000
Phone Number: (08) 9222 9409
Fax Number: (08) 9222 9690
E-Mail Correspondence: dpaice@dpc.wa.gov.au

The contents of this document are available on the Authority's website (<http://www.era.wa.gov.au>) and may also be made available in alternative formats to meet the needs of people with disabilities on request.

1 Introduction

The purpose of this document is to provide guidance to organisations or persons seeking to apply for a licence under relevant legislation to:

- generate, distribute, transmit or sell electricity; or
- distribute or sell gas; or
- provide a water service.

This licence application guideline has been developed to assist applicants for electricity, gas and water licences and outlines the following information:

- Who needs to apply for a licence?
- How to apply for a licence?
- Licence fees, licence areas and term of licence.
- Information required for a licence application.
- How a licence is granted
- Terms and conditions of licences.
- Can an applicant appeal against the Authority's decision?
- How are licences enforced?
- How is a licence renewed, transferred or amended?
- How is a licence surrendered or cancelled?
- Relevant legislation, regulations and industry codes (Appendix 1);
- The Licence Application Form (Appendix 2); and
- The Licence Amendment Application Form (Appendix 3)

The Authority has also published a discussion paper on best practice regulation, which sets out its interpretation of best practice regulation, particularly in relation to utility licensing, and proposed mechanisms for achieving it. The discussion paper is available on the Authority's web site by clicking [here](#).

2 Who needs to apply for a licence?

Relevant legislation determines who needs to apply for a licence.

The relevant legal instruments for electricity, gas and water licensing in the State of Western Australia are the:

- *Electricity Industry Act 2004* ('Electricity Act');
- *Energy Coordination Act 1994* ('Gas Act'); and
- *Water Services Licensing Act 1995* ('Water Act').

Potential licence applicants should make themselves familiar with the relevant licensing requirements in these Acts. Copies of these Acts, and associated codes/regulations may be obtained from the State Law Publisher website at <http://www.slp.wa.gov.au/index.html>.

2.1 Electricity Licences

[Part 2 of the Electricity Act]

An electricity supply licence is required for participants in the electricity industry who intend to, or currently, generate, transmit, distribute or sell electricity unless otherwise exempt.

Electricity licences are categorised as follows:

- generation equal to or above 30MW at each connection point (see Electricity Industry Exemption Order 2005), which authorises the construction and operation of generating works;
- transmission, which authorises the construction and operation of transmission systems - 66kV or higher;
- distribution, which authorises the construction and operation of distribution systems - less than 66kV;
- retail, which authorises the sale of electricity to end use consumers; or
- integrated regional, which authorises the construction and operation of any combination of generation, transmission, distribution and retail activities otherwise than through the South West Interconnected System (SWIS).

2.2 Gas Licences

[Part 2 of the Gas Act]

A gas supply licence is required for participants in the gas industry who intend to, or currently, distribute or sell gas through a gas distribution system, unless otherwise exempt, within a designated supply area or part of a supply area.

The Gas Act defines supply areas and a map of the supply areas is available on the Authority's web site.

The Gas Act defines a distribution system as a system of pipelines, mains, and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers. Gas licences are categorised, as follows:

- 1) distribution, which authorises the licensee to:
 - a) construct a distribution system and to transport gas through the system of pipelines; or
 - b) transport gas through an existing distribution system, and if required for that purpose to make alterations to the system; and
 - c) to operate and maintain the system; or
- 2) trading which authorises the licensee to sell gas transported through a distribution system to small use customers.

Small use customers are defined in the Gas Act as customers whose consumption of gas is less than 1 terajoule per year.

2.3 Water Licences

[Part 3 of the Water Act]

An operating licence is required for participants in the water industry who intend to, or currently, provides water services in a controlled area or part of a controlled area unless otherwise exempt.

The Water Act defines controlled areas and a map of the supply areas is available on the Authority's web site.

Water licences are categorised as follows:

- water supply services (includes potable (drinking water) and non potable water supply);
- sewerage services;
- irrigation services; and
- drainage services.

2.4 Exemptions

A person or class of persons may be exempt from the requirement to hold a licence if the Governor by order provides for circumstances in which an exemption is to apply. Any order for an exemption must be published in the Government Gazette. Persons seeking to apply for a licence exemption should contact:

- the Office of Energy on (08) 9420 5600 (electricity and gas licence exemptions): or
- the Department of Water on (08) 6364 7600 (operating water licence exemptions).

3 How to apply for a licence?

[Section 10 of the Electricity Act, Section 11(L) of the Gas Act and Section 22 of the Water Act]

Written applications must be made to the Authority on the prescribed application form; a copy of which can be found on the Authority's web site or at Appendix 2.

The Authority may require different amounts of information (both from a financial and/or technical aspect) from the applicant depending on:

- the nature of the application;
- whether the applicant is an existing licensee;
- the applicant's level of financial and technical resources and considerations in relation to public interest matters related to the proposed application;
- if the application proposal is to supply/distribute electricity, gas or water for commercial users or to sell to small use energy consumers or domestic purchasers of water services;
- if the proposed project is securely financed; and
- if the level of technical expertise of the applicant is commensurate with the applicant's experience in operating an existing electricity supply system, gas distribution system, water supply works or supplying these services to customers successfully for some time.

For this reason, applicants should contact the Authority to determine the extent of the information required to support their application prior to lodgement.

The Authority may reject an application in situations where limited or incomplete information has been provided. Applications should be clear, comprehensive and complete.

4 Licence fees, licence areas and term of licences

4.1 Licence Application Fees

Under respective Electricity, Gas and Water Regulations, fees can be payable for the grant, transfer, amendment or renewal of a licence as shown in the following table.

Licence Type	Licence Application Fee
Electricity licence grant, transfer amendment or renewal	\$500
Gas licence grant, transfer or renewal	\$375
Gas Licence amendment	\$500 or 10% of the annual licence fee whichever is the greater
Water licence application or renewal	\$200

4.2 Licence Fees

An annual licence fee is payable within one month of the grant of an electricity or gas licence and 12 months thereafter. There are no fees payable for the amendment or transfer of a water operating licence. As relevant fees are set by the Government, this is subject to change by Regulation and applicants should confirm the details with the Authority before lodging an application.

The Electricity Industry (Licensing Fees) Regulations 2005 (Electricity Regulations) prescribe the fees applicable to electricity supply licences in detail [Sections 10(1), 16(1), 17(1), 18(3), 21(2) of the Electricity Act]. The Energy Coordination (Licensing Fees) Regulations 1999 (*Gas Regulations*) prescribe the fees applicable to gas supply licences in detail [Sections 11(L), 11(P), 11(Q), 11(R), 11(VA) (2) of the Gas Act].

The current applicable licence fees for electricity and gas are shown below.

Annual Electricity Generation licence fees

Installed Capacity (MW)	Licence Fee
<5	\$500
5-50	\$2 000
50-100	\$3 500
100-1000	\$5 000
>1000	\$7 500

Annual Electricity Transmission licence fees

Transmission System Length (km)	Licence Fee
<1	\$500
1-10	\$3 750
10-100	\$7 500
100-1000	\$15 000
>1000	\$20 000

Annual Electricity Distribution licence fees

Distribution System Length (km)	Licence Fee
<1	\$500
1-10	\$5 000
10-100	\$10 000
100-1000	\$20 000
>1000	\$25 000

Annual Electricity Retail licence fees

Number of Customers	Licence Fee
<100	\$1 000
100-1000	\$7 500
1000-5000	\$12 500
5000-25000	\$20 000
>25000	\$35 000

Integrated regional licence fees

Integrated regional licence fees consist of the aggregate of the individual supply elements outlined above.

Annual Gas Distribution licence fees

Distribution System Length(km)	Licence Fee
<5 Distribution network transporting gas to small use customers only In any other case	\$150 \$1 500
5-20	\$2 250
20-100	\$3 750
>100	\$7 500

Annual Gas Trading licence fees

Number of Customers	Licence Fee
<100	\$150
100- 500	\$1 500
500-2000	\$3 000
>2000	\$4 500

4.3 Licence Areas

A licence must be designated to apply to one or more areas of the State specified in the licence [see section 5 of the Electricity Act, section 11A of the Gas Act, and Sections 10, 11, 12, 13 and 14 of the Water Act].

A licence applicant should specify the proposed licence area as part of the application. The applicant can identify their desired area of operation. It could be for example by specifying a Local Government Authority (LGA) or LGAs or the Department of Local Government and Regional Development's relevant Regional Development area(s).

The licence area will be shown on a map or maps and the applicant should consult with the Authority on the development of the map(s). The applicant can choose how to describe the licence area on the map(s). Where possible, map(s) should be sufficiently detailed to identify the location of all electricity, gas and water infrastructure and follow cadastral boundaries. The map(s) should include any areas where infrastructure extends over private or public land. In the case of retail or trading licences, applicants should provide map(s) over areas where they intend to trade.

Unless otherwise agreed, applicants are required to submit electronic versions of their proposed licence areas in the following digital formats:

- dgn
- dxf
- dwg; or
- shapefile.

Examples of map(s) are found on the Authority's web site and can be discussed with ERA staff.

Term of Licence

The applicant should specify the term of the licence and the reasons for that request. Licence terms are:

- The Electricity Act allows a retail licence to be granted for up to 15 years. Any other classification of an electricity licence other than a retail licence may be granted for up to 30 years;
- The Gas Act allows a trading licence to be granted for up to 10 years and a distribution licence can be granted up to 21 years; and
- The Water Act allows an operating licence to be granted up to 25 years.

5 Information required for a licence application

[Section 10 of the Electricity Act, Section 11(L) of the Gas Act and Section 22 of the Water Act]

Before submitting a licence application to the Authority, it is recommended that potential applicants contact the Authority's Licensing, Monitoring and Customer Protection Division to determine the level of information required in the application.

Applicants are encouraged to provide all relevant information that may assist the Authority to determine whether a licence should be granted.

The Authority will provide a public notice (on the Authority's web site) of licence applications that have been received and seek comment from interested persons consistent with the Authority's Public Consultation Guidelines for Electricity, Gas and Water Licences and Electricity and Gas Standard Form Contracts. Consequently, the Authority may publish information that is contained in the application and therefore, the applicant should clearly identify any confidential commercial or business information supplied in the application.

While this document identifies specific information requirements for an application, the Authority may request further information from applicants depending on the nature and scope of their licence application. The Authority may also obtain information from other parties.

An applicant should generally provide the following information:

5.1 Corporate Information

Applicants should provide sufficient information for the Authority to clearly identify the relevant entity. The information supplied may include the following.

- Identity of the applicant - legal entity name and trading name and relevant ACN or ABN;
- Address and contact details of the entity, including the name and details of a person the Authority can contact directly in relation to the licence;
- Legal identity of the applicant— whether the applicant is a public company, private company, joint venture, other body corporate, partnership, unincorporated association, sole trader or other entity, including copies of relevant articles of association and company registration details for the applicant and any associated or controlled entities;
- A list of all company directors or principals of the entity;

- A statutory declaration from the company directors or principals of the entity that they have not been or would not be disqualified under the *Corporations Act 2001 (Cwlth)* from managing corporations. A declaration (non statutory) to the same effect may suffice;
- The entity's profile, including the date the entity was founded, the entity's history, employee numbers and a description of the entity's activities;
- A list of associated and/or controlled entities. Where the licence applicant is part of a group of companies, the extent to which the financial obligations of the applicant are to be guaranteed by other group companies should be stated and a copy of the guarantee should be attached to the application. The financial statements described below should also be submitted for group companies which are guaranteeing the financial obligations of the applicant. The degree of control exercised by associated entities over the applicant and how that control is exercised should also be set out in the application; and
- If the applicant intends to rely on another entity to provide staff or resources, the applicant should ensure that the information requested above also is provided for that entity.

5.2 Financial information

Electricity and gas applicants must demonstrate that they have and will likely retain, or will acquire within a reasonable time and will then likely retain, the financial resources to undertake the activities authorised, or to be authorised, by the licence.

Water applicants must demonstrate that they have, and are likely to continue to have, the financial ability to provide the water services that will be covered by the licence.

The information required to demonstrate the applicant's financial resources¹ or financial ability² is set out below.

Current Financial Position

A description of the entity's current financial position is required as follows:

- The most recent audited general purpose financial report (with accounts) that complies with the Australian Accounting Standards Board (AASB) Standards, including the auditor's report. Reporting entities that are not required by legislation, Ministerial directive or other Government Authority to follow AASB Standards must at least comply with the Australian Accounting Standards (AAS). Applicants may comply with International Accounting Standards (IAS) if no accounts in Australian standards exist;
- Where possible, audited financial reports for the last two years should be provided together with the auditor's report;
- In the case of new entities which cannot provide financial and auditor's reports, financial information should be provided (such as interim accounts) to demonstrate that they have an acceptable credit rating or financial standing commensurate with their potential financial exposure;
- If the applicant is a subsidiary company, an audited general purpose financial report should be provided that complies with the AASB Standards or AAS for the parent company for the last year; and

¹ This term applies to electricity and gas applications.

² This term applies to water services applications.

- A declaration is required (if relevant) specifying the lenders financing the application proposal and the type of funding obtained including any secured funding, mezzanine debt, vendor finance or venture capital obtained.

Financial Projections

A description of the entity's financial projection is required for the life of the electricity, gas or water supply for the term of the licence as follows:

- Evidence to substantiate that the applicant is able to finance the assets and investment necessary to undertake the activities to which the application relates; and
- Projected revenue and expenditure figures for the next 3 years for the provision of services sufficient to demonstrate the financial security and feasibility for the activities to which the application relates.

Financial Policies

A description of the entity's financial policies or statements relating to the electricity, gas, or water supply is required as follows:

- A summary of accounting policies and internal control procedures;
- A summary of internal and external auditing policies;
- Any other supporting evidence or third party comments supporting the past, present and future financial position of the entity;
- Where relevant, utility supply pricing policies and procedures; and
- Intended services and markets and the nature of the business activities undertaken or to be undertaken by the utility supply applicant.

5.3 Technical Information

Electricity and gas applicants must demonstrate that they have and will likely retain, or will acquire within a reasonable time and will then likely retain, the technical resources to undertake the activities authorised, or to be authorised, by the licence.

Water applicants must demonstrate that they have, and are likely to continue to have, the technical ability to provide the water services that will be covered by the licence.

The information required to demonstrate the applicant's technical resources³ or technical ability⁴ is set out below.

Physical Environment

A description of the physical environment of the proposed utility supply and its immediate vicinity should be provided including all land and areas affected by the proposed application.

Utility Supply

A description of the proposed utility supply infrastructure and any interconnected infrastructure systems.

- Where applicable, provision of supply connection related information including actual or estimated number of connections to be served by customer type (e.g. industrial, commercial, residential).

³ This term applies to electricity and gas applications.

⁴ This term applies to water services applications.

- Where applicable, evidence of actual or proposed metering arrangements, for example:
 - agreements with network service providers;
 - details of metering agents; and
 - arrangements for dealing with metering complaints and queries.
- Where applicable, forecast annual maximum demand for each of the next 5 years in the utility system (note: electricity measured in MW, gas measured in terajoules and water measured in ML), for example:
 - for an electricity licence application, information on the proposed energy (MWh) to be transmitted or distributed in the next 5 years is required.
- If the applicant proposes to supply:
 - electricity to consumers who consume not more than 160MWh per annum (or less than \$28,000 per year), a copy of the applicant's proposed standard form contract (section 49 of the Electricity Act).
 - gas to consumers who consume not more than 1 terajoule per annum , a copy of the applicant's proposed standard form contract (section 11WD of the Gas Act).
- Where applicable, evidence of a commitment to remain or become a member of an approved Ombudsman scheme and to be bound by any decisions of such an Ombudsman (applies to electricity and gas retail, trading and distribution licences).
- Where applicable, evidence of compliance with relevant supply industry methods, quality, standards and codes including compliance with relevant consumer protection arrangements such as:
 - terms and conditions of any proposed standard customer contract;
 - evidence of managing customer accounts;
 - evidence of customer service provision (customer information provision (eg. tariffs, fees and charges), customer service charters, customer consultation processes, account enquiries, payment arrangements, complaints, disputes, account termination, customer performance measures etc);
 - evidence of customer information management systems (systems for recording customer details, contract arrangements, payment history, complaints etc);
 - if the applicant is applying for a gas licence, a description of the customer safety awareness program which complies with the *Gas Standards (Gas Supply and System Safety) Regulations 2000* which is regulated by the Department of Consumer and Employment Protection (DOCEP);
 - A description and written evidence of environmental approvals or permits.

Construction Activities

A detailed construction schedule should be provided of all proposed construction activities including proposed commencement and completion dates of the construction activities and commissioning of works. Construction activities must specify the location of any areas to be temporarily or permanently affected by such activities (note this information is not required for an electricity retail or gas trading licence application or where an applicant is an existing distributor – water sale).

Technical Ability

A description of the technical ability of the organisation is required as follows:

- A description of the applicant's prior experience and/or appropriate training related to the nature of the proposed activity;
- A description of the qualifications of personnel to be used to install and/or operate and/or maintain the supply of electricity, gas or water and evidence of the applicant's policy on the use of sub-contractors;
- Details of any relevant licences or approvals held by the applicant relating to the supply of electricity, gas or water in Western Australia or elsewhere; and
- If the applicant intends to rely on another entity to provide staff and resources, the applicant should provide a summary of the relationship between the applicant and this entity, including any formal agreements to provide services and a summary of this other entity's experience in and knowledge of the electricity, gas or water industries and technical capacity to meet the relevant requirements of the licence.

Asset Management System

A detailed description of the asset management system is required (not required for an electricity retail licence or a gas trading licence) as follows:

- The measures to be taken by the applicant for the proper maintenance of assets used in the provision of the electricity, gas or water supply and for undertaking maintenance and operation of electricity, gas or water supply works; and
- A description of the existing or proposed asset registers, risk assessments, asset management plans, quality management systems, construction standards, maintenance manuals/plans/schedules, asset management information systems and data management.

Other Licences

Details of any other equivalent licence held by the applicant or their associated or controlled entities issued under the law of another State or Territory are required as follows.

- A signed statutory declaration giving particulars of the applicant's interstate licence/licences and any details of:
 - breaches of those licences;
 - allegations of breaches of those licences;
 - enforcement orders made in relation to those licences; and
 - a written authorisation for the Authority to seek information about the applicant or associated or controlled entities and its interstate licences from relevant regulatory bodies in other jurisdictions.

5.4 Public interest information

[Sections 8(5), 9 of the Electricity Act, Sections 11H, 11(WA), 11(K), 26 of the Gas Act and Sections 19, 23, 31(A) of the Water Act]

In considering an application, the Authority must not grant a licence unless the Authority is satisfied that it would not be contrary to the public interest. When considering the public interest, the Authority may take into account the following.

- Environmental considerations;

- Social welfare and equity considerations, including community service obligations;
- Economic and regional development, including employment and investment growth;
- The interests of customers generally or of a class of customers;
- The interests of any licensee, or applicant for a licence, in respect of the area or areas to which the order, if made, would apply;
- The importance of competition in electricity, gas or water supply markets;
- The policy objectives of government in relation to the supply of electricity, gas or water including that which is not limited to providing safe reliable services; and
- Any other matters considered appropriate and relevant which may impact on the public interest.

5.5 Request for further information

The Authority reserves the right to request any additional information believed necessary to consider a licence application and may make such other enquiries as it considers necessary to assess the application. The Authority is unable to determine an application unless the applicant provides it with sufficient information and may reject an application if sufficient information is not provided.

In support of their application, applicants may consider providing copies of, or extracts from, the following documents. This information is not obligatory:

- Business Plan;
- Capital Investment Procedures;
- Condition Assessment Reports;
- Construction Management Procedures;
- Customer Service Charter;
- Customer Consultation Reports;
- Emergency Response Plans;
- Energy allocation contract, and or guaranteed approvals;
- Environmental Impact;
- Geographic Information System;
- Job / Resource Management System;
- Maintenance Management System (including Maintenance Manuals);
- Operations Manuals / Procedures;
- Organisational Structure;
- Previous Annual Reports;
- Resourcing Plan;
- Risk Assessment Report;
- Risk / Contingency Plans;
- Scheme Development Plan;

- Summary of past performances, target performances and actual performances in meeting performance indicators and or targets;
- Surveys conducted relating to the proposed electricity, gas or water supply; and
- Training Programs.

6 How a licence is granted

6.1 Granting a Licence

[Sections 9, 19, 50, 100 of the Electricity Act, Sections 11(K) 11(S), 11(WE, 11(ZQF) of the Gas Act and Sections 22(2)(e), 23, 24, 28, 30, 31 of the Water Act]

The Authority may grant a licence if it is satisfied that the applicant has or will acquire, within a reasonable time and then is likely to retain, the financial and technical resources to undertake the activities to be authorised by the licence. In addition, when considering a licence application, the Authority is required to satisfy itself that the grant of the licence would not be contrary to the public interest.

Prerequisites for issuing licences are as follows:

- Electricity retail, electricity integrated regional and gas trading licences cannot be granted until standard form contracts between the applicant and potential customers are approved by the Authority (section 50 of the Electricity Act or section 11WE of the Gas Act); and
- Retail, trading and distribution licences cannot be granted unless the applicant is or will become a member of an approved Energy Ombudsman scheme (section 100 of the Electricity Act or section 11ZQF of the Gas Act).
- In the case of water licensing no prerequisites exist before an operating licence is granted or renewed.

6.2 Time Required to Grant a Licence

[Section 19(2) of the Electricity Act, Section 11(S) of the Gas Act]

The Authority will take all reasonable steps to consider and make a decision on whether to amend, grant, reject, renew or transfer a licence within 90 days of receiving a complete application.

The length of the consideration process will vary depending on the complexity of the application and the quality of information contained within the application. The length of the process is also affected by the need for the Authority to undertake a public consultation process.

An applicant can assist the Authority to reduce the time to consider an application and make a decision by liaising with the Authority prior to making a formal application and providing all relevant information at the time the application is lodged.

A notice of the Authority's decision to amend, grant, renew or transfer a licence will be published in the Government Gazette.

7 Terms and conditions of the licence

[Sections 11,12,13,14,32,54,58,65,76,82,101,Schedule 1 of the Electricity Act, Sections 11WC,11WD, 11M,11M, 11WN,11Y,11Z, 11ZA, 11ZB,11WL,11ZPP,

11ZQF, Schedule 1A of the Gas Act and Sections 4, 10, 11, 12, 22, 24, 32, 33, 34, 35, 36, 37, 38, of the Water Act]

The Authority has the power to determine the terms and conditions of the licence. [Refer section 11, Schedule 1 of the Electricity Act, section 11M, Schedule 1A of the Gas Act and section 24 of the Water Act.] Licence conditions may also be imposed by legislative enactment by the Government.

Additionally, Schedule 1 of the Electricity Act, Schedule 1A of the Gas Act and Divisions 4, 5, 6 and 7 and Schedule 1 of the Water Act set out the nature of the licence conditions which the Authority may include in the licence. Licence terms and conditions may include:

- Requirements to comply with specified industry codes and standards;
- Requirements to keep accounting and other records;
- Limitation upon licensee's business activities;
- Methods or standards to be applied in supplying the service;
- Procedures for the amendment, revocation or surrender of a licence;
- Requirements for provision of information by the licensee;
- Regulation of construction and/or operation of distribution works and system;
- The range of functions that may be performed by the licensee including performance criteria and community service obligations;
- Obligations with respect to public authorities and other licence holders; and
- Provisions governing disposal and transfer of property and licences.

Applicants are encouraged to view existing utility licences on the Authority's web site.

8 Is there a mechanism to appeal the Authority's decision?

[Section 130 of the Electricity Act, Section 11(ZH) of the Gas Act and Section 44 of the Water Act]

A person or class of people adversely affected by a decision or direction of the Authority under the Electricity Act may apply to the Western Australian Gas Review Board for a review of the decision or direction.

A person or class of people adversely affected by a decision or direction of the Authority under the Gas Act or Water Act may apply to the State Administrative Tribunal as defined in the *State Administrative Tribunal Act 2004 (WA)* for a review of the decision or direction.

9 How are licences enforced?

[Sections 32, 33, 34 of the Electricity Act, Sections 11(ZB), 11(ZOR), 11(ZOS), 11(ZOT) of the Gas Act and Sections 39, 40 41 of the Water Act]

If the Authority believes that a licensee has contravened the terms and conditions of its licence, it may send a notice to the licensee requiring the contravention to be rectified.

If the Authority is not satisfied that this notice has been reasonably complied with, the licensee may be:

- served with a letter of reprimand;
- ordered to pay a penalty of up to \$100,000; and/or
- directed to rectify the contravention.

If necessary, the Authority may authorise persons to enter any premises to rectify the contravention. In this case, the Authority may recover costs for rectifying a contravention.

Before the Authority can impose a penalty or cause action to be taken to rectify a contravention, it must notify the licence holder and give the licence holder a reasonable opportunity to make a submission on the matter. However if the public's health or safety is or may be at risk, the Authority does not need to provide notice to the licence holder and the licence holder is not entitled to make a submission on the matter.

10 How is a licence renewed, transferred or amended?

Licences may be renewed on expiry on written application to the Authority. *[Sections 16 and 17 of the Electricity Act, Sections 11(P) and 11(S) of the Gas Act and Sections 28 and 29 of the Water Act]*. The application for renewal should follow the same format as an application for a new licence.

To transfer a licence, existing licence holders need the Authority's written approval. *[Section 18 of the Electricity Act and Sections 11(R) and 11(S) of the Gas Act and Section 30 of the Water Act]*. A transfer will be processed in a manner similar to an application for a new licence and any applications should follow a similar format.

All licences contain provisions that set out the procedure for amending the terms and conditions of the licence, including any notification requirements. *[Sections 21 and 22 of the Electricity Act, Sections 11(VA) and 11(W) of the Gas Act and Section 31 of the Water Act]*. The licensee may apply to the Authority at any time to amend the licence provided it applies in a form approved by the Authority, a copy of which is provided in Appendix 3. In certain circumstances, the Authority may request that a licence be amended.

Subject to the terms of the licence, the Authority will provide the licence holder with an opportunity to comment on any proposals to amend its licence and publish a notice of the amendment decision in the Government Gazette. Any amendment must not be contrary to the public interest. The Authority, in considering an application for renewal, transfer or amendment may need to undertake a public consultation process (refer Public Consultation Guidelines – For Electricity, Gas & Water Licences and Electricity & Gas Standard Form Contracts July 2006).

11 How is a licence surrendered or cancelled?

6.1 Surrender

[Schedule 1(1) of the Electricity Act, Division 7 of the Gas Act and Schedule 1 of the Water Act]

A licence may contain conditions specifying procedures for revocation or surrender of the licence.

6.2 Cancellation

[Section 35 of the Electricity Act, Section 11(ZE) of the Gas Act and Section 42 of the Water Act]

A licence may be cancelled if a licensee:

- has not complied with a term or condition of the licence and the failure is material in terms of the operation of the licence as a whole;
- has failed to pay a licence fee;
- becomes an externally administered corporation within the meaning of the *Corporations Act 2001 (Cwlth)*; and
- has, within a period of 24 months, been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10,000 or more or imprisonment for 12 months or more.

The Governor determines whether a licence shall be cancelled, but the Authority is required to publish notice of the cancellation in the Government Gazette.

A person or a class of people who had their licence cancelled could seek judicial review of that decision in the Supreme Court.

Further Information

It is recommended that potential applicants contact the Authority for further information, as follows.

The Assistant Director Licensing
Licensing, Monitoring and Customer Protection Division
Economic Regulation Authority
P.O. BOX 8469
PERTH BC WA 6849
Ph. (08) 9213 1900

Appendix 1: Relevant Legislation, Regulations and Industry Codes

The licensing regime contained in Part 2 of the Electricity Act, Part 2A of the Gas Act and Part 3 of the Water Act is in addition to other laws relating to the supply of electricity, gas and water on such matters as environmental safety and technical regulation. Applicants should familiarise themselves with other relevant legislation, regulations and industry codes.

Legislation, regulation and industry codes relevant to the electricity, gas and water sectors in this State include but are not limited to the following:

Electricity

- *Electricity Act 1945*;
- Regulations under the Electricity Act 1945;
- *Electricity Corporation Act 1994*;
- *Electricity Transmission and Distribution Systems (Access) Act 1994*;
- *Energy Operators (Powers) Act 1979*;
- *By-laws under the Energy Operators (Powers) Act 1979*;
- *Electricity Industry Act 2004* (Electricity Act);
- Electricity Industry (Code of Conduct) Regulations 2005;
- Electricity Industry (Customer Contracts) Regulations 2005;
- Electricity Industry (Licence Conditions) Regulations 2005;
- Electricity Industry (Licence Fees) Regulations 2005;
- Electricity Industry (Ombudsman Scheme) Regulations 2005;
- Electricity Industry (Obligations to Connect) Regulations 2005;
- Code of Conduct for Supply of Electricity to Small Use Customers 2005 (Code of Conduct);
- Electricity Industry Customer Transfer Code 2004;
- Electricity Industry Metering Code 2005;
- Electricity Industry (Network Quality and Reliability of Supply) Code 2005; and
- Electricity Networks Access Code 2004.

Gas

- *Energy Coordination Act 1994* ('Gas Act');
- *Gas Pipeline Access Act 1998*;
- *Gas Standards Act 1972*;
- Various regulations under the *Gas Standards Act 1972*;
- Gas Standards (Gas Supply and System Safety) Regulations 2000;
- Natural Gas Customer Service Code AG 755-1998 (Gas Code of Conduct);
- National Third Party Access Code for Natural Gas Pipeline Systems 1997; and

- Gas Marketing Code of Conduct.

Water

- *Water Services Licensing Act 1995* ('Water Act');
- Water Services Coordination Regulations 1996; and
- Water Services Licensing (Extension of Enactments) Regulations 1997.

General

- *Economic Regulation Authority Act 2003*
- *Courts Legislation Amendment and Repeal Act 2004*;
- *State Administrative Tribunal (Conferral of Jurisdiction) Act 2004*;

Copies of these Acts, and associated codes/regulations that relate to these Acts, may be obtained from the State Law Publisher web site at <http://www.slp.wa.gov.au/index.html>.

Copies of the Codes are also available on the Authority's web site at <http://www.era.wa.gov.au>.

Appendix 2: Licence Application Form



Electricity Industry Act 2004 (WA)

Energy Coordination Act 1994 (WA)

Water Services Licensing Act 1995 (WA)

Electricity, Gas and Water Licence Application Form

Introduction

Licence applications to the Economic Regulation Authority (Authority) are submitted under the provisions of the *Electricity Industry Act 2004*, the *Energy Coordination Act 1994* and the *Water Services Licensing Act 1995* (the Electricity, Gas and Water Acts). Applicants should be aware of the Electricity, Gas and Water Acts' licensing provisions. While, the Authority can assist an applicant in preparing an application and provide advice in relation to the information required as part of the licensing process, it is the responsibility of the applicant to ensure that the application complies with the Electricity, Gas and Water Acts as appropriate to the type of application. The application should consist of this form and attachments addressing the information required to support the application as set out in the Application Guideline. All information including plans should be submitted to the Authority in triplicate, together with an electronic copy of all information in a suitable format. The application fee must accompany this application.

If the applicant comprises more than one legal person (e.g. a Joint Venture), the information required for this application is to be provided for each person.

The Authority is bound by its obligations relating to confidential information in the *Public Sector Management Act 1994 (WA)* and the *Economic Regulation Authority Act 2003 (WA)*.

Accordingly, the Authority has a very strict privacy policy regarding sensitive business and commercial information which is provided to the Authority as part of an electricity supply application or pursuant to the terms of a licence.

The Authority is bound by the *Freedom of Information Act 1992 (WA)* (FOI Act). Section 33 of the FOI Act requires the Authority to consult with a party who has provided it with commercial or business information as to whether the Authority should provide access to the material.

Further, the Authority will not provide information to an applicant under the FOI Act if the disclosure:

- would reveal trade secrets of a person;
- would reveal information (other than trade secrets) that has a commercial value to a person and disclosure could reasonably be expected to destroy or diminish that commercial value; or
- would reveal information about the business, professional, commercial or financial affairs of a person and disclosure could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

Under the FOI Act, if the Authority resolves to release commercial or business information, the party who has provided it to the Authority can ask the Authority to review the decision internally or may have the decision reviewed by the:

Information Commissioner
Department of Premier and Cabinet
21st Floor
197 St Georges Terrace
Perth WA 6000
Phone Number: (08) 9222 9409

For this reason, the Authority recommends that applicants identify documents which may fall within the provisions of section 33 of the FOI Act which contain:

- information (other than trade secrets) that has a commercial value to the business;
or

- any other information concerning the business, professional, commercial or financial affairs of the business.

Accordingly, the Authority seeks the applicant's views as to whether the documents contain matter that is exempt matter under clause 4 of Schedule 1 of the FOI Act. If the Authority decides that this matter is exempt matter the Authority will refuse access to the documents by any third parties.

Applicant Details

Applicant Details	
Name	
Registered Office (if a Corporation)	
Principal Place of Business (if different from Registered Office)	

Contact Details	
Contact Name	
Mail Address	
Email	
Telephone	
Fax	

Company Structure	
ABN or ACN	
Legal Nature of Applicant	
Place of Incorporation	

Electricity Licences

Classification of the Electricity Licence Application		
Type of Licence Application	Generation Transmission Distribution Retail Integrated Regional	
For Generation and Integrated Regional Licences	Installed Capacity	_____ megawatts
For Transmission and Integrated Regional Licences	Transmission System Length	_____ kilometres
For Distribution and Integrated Regional Licences	Distribution System Length	_____ kilometres
For Retail and Integrated Regional Licences	Number of Customers	_____

Gas Licences

Classification of the Gas Licence Application		
Type of Licence Application	Distribution Trading	
For Distribution Licences	Distribution System Length	_____ kilometres
For Trading Licences	Number of Customers	_____

Water Licences

Classification of the Water Operating Licence Application		
Type of Licence Application	Potable Non-Potable Drainage Irrigation Sewerage	
For all Water Operating Licence Classifications	Water System Length	_____ metres/kilometres (delete as applicable)
For all Water Operating Licence Classifications	Number of Customers	_____

Areas to be covered by the licence

Designated area of the Licence Application	
Specific Area and/or Address to be covered by this licence.	_____ _____
If the area covered by this licence is restricted to less than 4 Local Government Areas (LGAs) please list them here	Licence covers > 3 LGAs Specific LGAs covered 1 _____ 2 _____ 3 _____
Region(s) to be covered by this licence	Perth Metropolitan Gascoyne Goldfields-Esperance Great Southern Kimberley Mid-West Peel Pilbara South West Wheatbelt

Certification – Acknowledgement of Commitment

I declare that the information provided in this application is correct to the best of my knowledge and I am aware of the requirements under the Act for the licence being applied for and that I have the authority to make this application on behalf of the above entity.

Signed by or on behalf of the applicant⁵.

Name:

Position:

Signed:

Date:

⁵ If signed on behalf of the applicant, please attach the relevant authority to bind the applicant.

Appendix 3: Licence Amendment Application Form



Electricity Industry Act 2004 (WA)

Energy Coordination Act 1994 (WA)

Water Services Licensing Act 1995 (WA)

Electricity, Gas and Water Licence Amendment Application Form

Introduction

Licence amendment applications to the Economic Regulation Authority (Authority) are submitted under the provisions of the *Electricity Industry Act 2004 (WA)*, the *Energy Coordination Act 1994 (WA)* and the *Water Services Licensing Act 1995 (WA)* (the Electricity, Gas and Water Acts). Applicants should be aware of the Electricity, Gas and Water Acts' licensing provisions. While the Authority can assist an applicant in preparing an amendment application and provide advice in relation to the information required as part of the licensing process, it is the responsibility of the applicant to ensure that the application complies with the Electricity, Gas and Water Acts as appropriate to the type of application. The amendment application should consist of this form and attachments addressing the information required to support the application as set out in the Application Guideline. All information including plans should be submitted to the Authority in triplicate, together with an electronic copy of all information in a suitable format. The amendment application fee must accompany this application.

If the applicant comprises more than one legal person (e.g. a Joint Venture), the information required for this application is to be provided for each person.

The Authority is bound by its obligations relating to confidential information in the *Public Sector Management Act 1994 (WA)* and the *Economic Regulation Authority Act 2003 (WA)*.

Accordingly, the Authority has a very strict privacy policy regarding sensitive business and commercial information which is provided to the Authority as part of an electricity supply application or pursuant to the terms of a licence.

The Authority is bound by the *Freedom of Information Act 1992 (WA)* (FOI Act). Section 33 of the FOI Act requires the Authority to consult with a party who has provided it with commercial or business information as to whether the Authority should provide access to the material.

Further, the Authority will not provide information to an applicant under the FOI Act if the disclosure:

- would reveal trade secrets of a person;
- would reveal information (other than trade secrets) that has a commercial value to a person and disclosure could reasonably be expected to destroy or diminish that commercial value; or
- would reveal information about the business, professional, commercial or financial affairs of a person and disclosure could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

Under the FOI Act, if the Authority resolves to release commercial or business information, the party who has provided it to the Authority can ask the Authority to review the decision internally or may have the decision reviewed by the:

Information Commissioner
Department of Premier and Cabinet
21st Floor
197 St Georges Terrace
Perth WA 6000
Phone Number: (08) 9222 9409

For this reason, the Authority recommends that applicants identify documents which may fall within the provisions of section 33 of the FOI Act which contain:

- information (other than trade secrets) that has a commercial value to the business;
or
- any other information concerning the business, professional, commercial or financial affairs of the business.

Accordingly, the Authority seeks the applicant's views as to whether the documents contain matter that is exempt matter under clause 4 of Schedule 1 of the FOI Act. If the Authority decides that this matter is exempt matter the Authority will refuse access to the documents by any third parties.

Applicant Details

Applicant Details	
Name	
Registered Office (if a Corporation)	
Principal Place of Business (if different from Registered Office)	

Contact Details	
Contact Name	
Mail Address	
Email	
Telephone	
Fax	

Company Structure	
ABN or ACN	
Legal Nature of Applicant	
Place of Incorporation	

Amendment Details	
Licence No	
Reason for and Details of the Amendment	
	Note: Add more space as necessary

Certification – Acknowledgement of Commitment

I declare that the information provided in this application is correct to the best of my knowledge and I am aware of the requirements under the Act for the licence being applied for and that I have the authority to make this application on behalf of the above entity.

Signed by or on behalf of the applicant⁶.

Name:

Position:

Signed:

Date:

⁶ If signed on behalf of the applicant, please attach the relevant authority to bind the applicant.

Version Control

Version Date	Description of Changes
January 2007	First Version
June 2008	Section 5.2 and 5.3 to reflect information requirements in the <i>Water Services Licensing Act 1995</i>