

*Electricity Industry Act 2004*  
*Energy Coordination Act 1994*  
*Water Services Licensing Act 1995*

# **Electricity, Gas and Water Licences: Application Guideline and Forms**

**Draft September 2011**

Economic Regulation Authority



WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at [www.erawa.com.au](http://www.erawa.com.au). For further information, contact

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Licensing, Monitoring and Customer Protection Division  
Economic Regulation Authority  
Perth, Western Australia  
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The summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. 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 or licence provisions.

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## Important Notice

The Economic Regulation Authority (**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.

This document has been compiled in good faith by the 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 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 information that will be 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.erawa.com.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 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 third party access to this 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 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  
Office of the Information Commissioner  
The Department of Premier and Cabinet  
12<sup>th</sup> Floor, St Martin's Tower  
44 St Georges Terrace  
PERTH WA 6000  
Phone Number: (618) 9222 7888  
Fax Number: (618) 9325 2152  
Country callers: (tel) 1800-621-244 (WA only)  
E-Mail Correspondence: [info@foi.wa.gov.au](mailto:info@foi.wa.gov.au)  
Web: <http://www.foi.wa.gov.au>

The contents of this document are available on the Authority's website (<http://www.erawa.com.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 that is required in a licence application;
- how a licence is granted;
- terms and conditions of licences;
- how applicants may appeal against the Authority's decisions in relation to a licence application;
- how licences are enforced;
- how a licence is renewed, transferred or amended;
- how a licence is surrendered or cancelled;
- relevant legislation, regulations and industry codes (**Appendix 1**);

This guideline also includes 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 regulation in relation to utility licensing, and proposed mechanisms for achieving best practice. The discussion paper is available on the Authority's website (<http://www.erawa.com.au>).

### Who needs to apply for a licence?

Relevant legislation determines who needs to apply for a licence.

The relevant legislation 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**).

Persons considering applying for a licence should familiarise themselves 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>

## 2.1 Electricity licences

*[Part 2 of the Electricity Act applies]*

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

Electricity licences are categorised as follows:

- generation (equal to or greater than 30MW at each connection point),<sup>1</sup> 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 2A of the Gas Act applies]*

A gas supply licence is required for participants in the gas industry which 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. A map of the supply areas is available on the Authority's website.

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,  
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.

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<sup>1</sup> See the *Electricity Industry Exemption Order 2005*

## 2.3 Water licences

*[Part 3 of the Water Act applies]*

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

The Water Act defines controlled areas. A map of the controlled areas is available on the Authority's website.

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 (water services operating licence exemptions).

## 3. How to apply for a licence

*[Section 10 of the Electricity Act, Section 11L of the Gas Act and Section 22 of the Water Act apply]*

Written applications must be made to the Authority in the form prescribed by the Authority. A copy of the Authority's Licence Application Form is provided in Appendix 2.

The Authority's information requirements may differ between applicants depending on:

- the nature of the application;
- whether the applicant is an existing licensee;
- the applicant's level of financial and technical resources
- consideration of public interest matters related to the proposed application;
- the impacts on customers;
- how the proposed project is financed;
- the level of technical expertise of the applicant; and
- the applicant's experience in operating and/or supplying licensed services to customers.



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/operating areas and term of licences

### 4.1 Licence application fees

Under respective Electricity, Gas and Water Regulations, fees may be payable for the grant, transfer, amendment or renewal of a licence as shown in Table 1.

**Table 1: Licence application fees (as at 1 July 2011)**

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 Annual licence fees

An annual licence fee is payable within one month of the grant of an electricity or gas licence and 12 months thereafter. Currently there is no fee 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 11L, 11P, 11Q, 11R, 11VA (2) of the Gas Act].

The current applicable licence fees for electricity and gas are shown in the following tables.

**Table 2: Annual Electricity Generation Licence Fees (as at 1 July 2011)**

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

**Table 3: Annual Electricity Transmission Licence Fees (as at 1 July 2011)**

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

**Table 4: Annual Electricity Distribution Licence Fees (as at 1 July 2011)**

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

**Table 5: Annual Electricity Retail Licence Fees (as at 1 July 2011)**

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

### Integrated regional licence fees

Integrated regional licence fees are made up from the aggregate of the applicable individual elements outlined above.

**Table 6: Annual Gas Distribution Licence Fees (as at 1 July 2011)**

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

**Table 7: Annual Gas Trading Licence Fees (as at 1 July 2011)**

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

### 4.3 Licence and operating 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 11E of the Gas Act, and Section 16 of the Water Act].

The licence applicant should specify, in their application, the proposed licence area in which electricity or gas will be supplied or, in the case of a water service the operating area.

The licence area will be shown on a map, or maps. Examples of map(s) can be found on the Authority's website. Applicants are encouraged to consult with the Authority on the requirements for 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 supply. Applicants are free to choose how to title the area on the map(s).

Unless otherwise agreed, applicants are required to submit electronic versions of their proposed map(s) in PDF format and one of the following digital formats:

- dgn;
- dxf;
- dwg; or
- shapefile.

#### 4.4 Term of licence

The applicant should specify the term of the licence and the reasons for the requested term. The Electricity Act allows a retail licence to be granted for up to 15 years. Any 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.

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 11L of the Gas Act and Section 22 of the Water Act apply]*

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. Once an application is lodged and the necessary application fees paid, the Authority will provide a public notice (on the Authority's website) of the licence application, including the summary of the application provided by the applicant. The notice will 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*.

The Authority may publish information that is contained in the application. Therefore, the applicant should ensure any confidential, commercial or business information supplied in the application is clearly marked.

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.

Applicants should generally provide the information detailed in section 5.1 - 5.5 below.

#### 5.1 Application Summary

The Authority requires applicants to provide a summary of the application that is suitable for publication. The summary should contain the following information (where relevant) in brief:

- A description of the applicant's structure and key organisational relationships.
- A description of service(s) or service model intended.
- A description of service infrastructure/works involved.
- Information on the status of regulatory approvals required.
- A description of any public consultation or stakeholder engagement processes undertaken by the applicant concerning the licence project.

#### 5.2 Corporate information

Applicants should provide information to the Authority that identifies the legal entity that is applying for the licence. 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 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;
- 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.

### 5.3 Financial information

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

The Water Act requires that applicants must demonstrate 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 resources<sup>2</sup> or financial ability<sup>3</sup> is set out below.

- 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.

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<sup>2</sup> This term applies to electricity and gas applications.

<sup>3</sup> This term applies to water services applications.

- Where available, audited financial reports for the last three years, which should be provided together with the Auditor's report, the Director's report and the Director's(s) declaration.
- 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.
- A description of the extent to which any financial obligations of the applicant are guaranteed by other group companies. A copy of guarantee agreements should be attached to the application.
- The contractual arrangements, existing or proposed, relating to the services that will be covered by the application (e.g. alliance contracts, associate contracts, establishment contracts) that define relationships within the group as they apply to this application. This may include shared resources, guarantees, revenue flows, obligations or responsibilities.
- A written declaration stating that:
  - an insolvency official has not been appointed in respect of the business or any property of the business;
  - no application or order has been made, or resolution has been passed or steps have been taken to pass a resolution, for the winding up or dissolution of the business; and
  - the applicant is not aware of any other factor that would impede its ability to finance the activities required by the licence.
- A declaration is required (where 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.
- Details of any bank guarantees.
- Evidence 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 5 years, or the life of the project, for the provision of services sufficient to demonstrate the financial security and feasibility for the activities to which the application relates. This forecast should highlight all key assumptions and risks, along with all relevant risk management strategies.
- Evidence including third party comments supporting the past, present and future financial position of the applicant.
- Copies of the entity's financial policies, including the applicant's accounting policies, internal and external auditing policies, risk management policies and internal control procedures.
- Where relevant, the applicant's pricing policies, methods and procedures.
- The intended services and markets and the nature of the business activities undertaken or to be undertaken by the utility supply applicant.

## 5.4 Technical information

The Electricity and Gas Acts require that 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.

The Water Act requires that 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 resources<sup>4</sup> or technical ability<sup>5</sup> is set out below:

- A description of the physical environment of the proposed activity and its immediate vicinity, including all land and areas affected by the proposed application. A description of the relevant supply infrastructure and any interconnected infrastructure systems.
- Where applicable, information about supply connection to networks or customers, including, details of the network connection and actual or estimated number of customers by type (e.g. industrial, commercial, residential).
- Where applicable, details of the actual or proposed metering arrangements for the proposed service including:
  - forecasts of annual maximum demand for each of the next 5 years;
  - agreements with network service providers;
  - agreements with metering agents; and
  - arrangements for dealing with metering complaints and queries.
- A description of the service system (note: electricity measured in MW, gas measured in terajoules and water measured in ML).
- If the applicant proposes to supply electricity to consumers who consume not more than 160MWh per annum, provide a copy of the applicant's proposed standard form contract (as required by section 49 of the Electricity Act)<sup>6</sup>.
- If the applicant proposes to supply gas to consumers who consume not more than 1 terajoule per annum, provide a copy of the applicant's proposed standard form contract (as required by section 11WD of the Gas Act)<sup>7</sup>.
- If the applicant proposes to provide water services, provide a copy of the applicant's Customer Service Charter.
- 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, provide evidence of compliance with relevant supply industry methods, quality, standards and codes including compliance with relevant consumer protection arrangements such as:

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<sup>4</sup> This term applies to electricity and gas applications.

<sup>5</sup> This term applies to water services applications.

<sup>6</sup> A retail licence can not be granted until the standard form contract is approved by the Authority.

<sup>7</sup> A trading licence can not be granted until the standard form contract is approved by the Authority.



- terms and conditions of any proposed standard customer contract;
- an outline of how customer accounts will be managed;
- details of customer information provision policies (e.g. tariffs, fees and charges), customer service charters, customer consultation processes, account enquiries, payment arrangements, complaints, disputes, account termination, customer performance measures etc);
- information on the customer information management systems used by the applicant;
- 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 Commerce;
- a description and written evidence of environmental, planning and public health approvals, permits or licences;
- a detailed construction schedule of all proposed construction activities, including proposed commencement and completion dates of the construction activities and commissioning of works, should be provided. 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);
- a description of the applicant's prior experience and/or appropriate training related to the nature of the proposed activity;
- a listing of the key personnel (including contractors) used to install or operate or maintain the supply of electricity, gas or water services with a summary of the key qualifications of the key personnel (including contractors);
- the applicant's policy on the use of sub-contractors;
- details of any relevant licences or approvals held by the applicant for the supply of electricity, gas or water services in Western Australia or elsewhere;
- 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. This should include evidence of agreements to provide services and a summary of this other entity's experience in and knowledge of the industry and technical capacity to meet the relevant requirements of the licence;
- a description of the asset management system is required (not required for an electricity retail licence or a gas trading licence), including:
  - the measures to be taken by the applicant for the proper maintenance of assets used in the provision of the electricity supply, gas supply or water services and for undertaking maintenance and operation of any works;
  - 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.



### 5.4.1 Other licences

The applicant should provide details of any other equivalent licence held by it or an associated or controlled entity issued under the law of another State or Territory, including a signed statutory declaration giving particulars of the applicant's interstate licence(s) 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.

### 5.5 Public interest information

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

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.
- Any other matters considered appropriate and relevant which may impact on the public interest.
- The public health considerations in relation to the provision of a safe drinking water supply.

### 5.6 Request for further information

The Authority reserves the right to request any additional information it believes necessary to consider a licence application and may make such other enquiries as it considers necessary to assess the application.

## 6. How a licence is granted

### 6.1 Granting a licence

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

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. The Authority is not to grant a water licence unless the Authority is satisfied that the applicant has, and is likely to continue to have, the financial and technical ability to provide the water services that will be covered 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.

There are a number of prerequisites required before licences can be issued:

- 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).
- Electricity retail, gas 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. However, the Authority normally approves the initial customer service charter of the applicant before it grants a water services operating licence.

### 6.2 Time required to grant a licence

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

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 time taken to process an application 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 minimise the time to consider an application by liaising with the Authority prior to making a formal application to ensure all relevant information is provided 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, 11N, 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 apply]*

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 WA State 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:

- specific requirements to comply with specified industry codes and standards;
- requirements to keep accounting and other records;
- any specific 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;
- the regulation of construction 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;
- the obligations with respect to public authorities and other licence holders; and
- provisions governing disposal and transfer of property and licences.

Applicants are encouraged to review existing utility licences on the Authority's website to gain an appreciation of the terms and conditions that are likely to apply to their application.

## 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 apply]*

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 Electricity 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 11ZB, 11ZOR, 11ZOS, 11ZOT of the Gas Act and Sections 39, 40 41 of the Water Act apply]*

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 subject to one or more of the following:

- a letter of reprimand;
- ordered to pay a penalty of up to \$100,000;
- 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?

### 10.1 Renewing licences

*[Sections 16 and 17 of the Electricity Act, Sections 11P and 11S of the Gas Act and Sections 28 and 29 of the Water Act apply].*

Licences may be renewed on expiry on written application to the Authority. The application for renewal should follow the same format as an application for a new licence.

### 10.2 Transferring licences

*[Section 18 of the Electricity Act and Sections 11R and 11S of the Gas Act and Section 30 of the Water Act apply].*

To transfer a licence, the existing licence holder needs the Authority's written approval. A transfer application, submitted by the person to whom the licence is to be transferred, will be processed in a manner similar to an application for a new licence, so the application should follow a similar format as an application for a new licence.

### 10.3 Amending licences

*[Sections 21 and 22 of the Electricity Act, Sections 11VA and 11W of the Gas Act and Section 31 of the Water Act apply]*

All licences contain provisions that set out the procedure for amending the terms and conditions of the licence, including any notification requirements. The licensee may apply to the Authority at any time to amend the licence provided the application is in a form approved by the Authority. A copy of the Authority's Licence Amendment Application Form 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 proposed licence amendments and publish a notice of the amendment decision in the Government Gazette.

## 11. How is a licence surrendered or cancelled?

### 11.1 Surrender

*[Schedule 1(1) of the Electricity Act, Division 7 of Part 2A and Schedule 1(1) of the Gas Act and Schedule 1 of the Water Act apply]*

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

### 11.2 Cancellation

*[Section 35 of the Electricity Act, Section 11ZE of the Gas Act and Section 42 of the Water Act apply]*

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)*; or
- 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; and
- has, within a period of 12 months been convicted of more than 3 offences for which the prescribed punishment exceeds the thresholds stated in the Electricity Act, Gas Act or Water Act.

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

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

## Further Information

It is recommended that potential applicants contact the Authority for further information:

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 not the only legislation applying to the supply of electricity, gas and water. There is other legislation dealing with such matters as environmental safety and technical regulation that applicants should familiarise themselves with.

Legislation, regulation and industry codes relevant to the electricity, gas and water sectors in Western Australia 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 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* (Code of Conduct)
- *Electricity Industry Customer Transfer Code 2004*
- *Electricity Industry Metering Code 2005*
- *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*
- *Electricity Networks Access Code 2004*

### Gas

- *Energy Coordination Act 1994*
- *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*

- *Gas Marketing Code of Conduct*

#### Water

- *Water Services Licensing Act 1995*
- *Water Services Coordination Regulations 1996*
- *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 website at <http://www.slp.wa.gov.au>.

Copies of the Codes are also available on the Authority's website at <http://www.erawa.com.au>.

## Appendix 2: Licence Application Form





***Electricity Industry Act 2004***

***Energy Coordination Act 1994***

***Water Services Licensing Act 1995***

# **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* (**Electricity Act, Gas Act and Water Act**). 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 duplicate, together with 3 electronic copies of all information in a suitable format. The application fee must accompany the 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 a licence 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 third party 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:

Information Commissioner  
Office of the Information Commissioner  
The Department of Premier and Cabinet  
12<sup>th</sup> Floor, St Martin's Tower  
44 St Georges Terrace  
PERTH WA 6000  
Phone Number: (618) 9222 7888  
Fax Number: (618) 9325 2152  
Country callers: (tel) 1800-621-244 (WA only)

E-Mail Correspondence: [info@foi.wa.gov.au](mailto:info@foi.wa.gov.au)

The Authority recommends that applicants identify documents which may fall within the provisions of section 33 of the FOI Act, being documents that 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 material that is, under clause 4 of Schedule 1 of the FOI Act an exempt matter. If the Authority decides that this matter is an 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	
Primary Contact Name	
Mail Address	
Email	
Mobile	
Telephone	
Fax	

Company Structure	
ABN or ACN	
Legal Nature of Applicant	
Place of Incorporation	
Company Directors or Principals	
Entity's core business profile	

Associated and/ or controlled entities	

## Electricity Licences

Classification of the Electricity Licence Application		
Type of Licence Application	Generation <input type="checkbox"/> Transmission <input type="checkbox"/> Distribution <input type="checkbox"/> Retail <input type="checkbox"/> Integrated Regional <input type="checkbox"/>	
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 large use customers	_____
For Retail and Integrated Regional Licences	Number of small use customers	_____

## Gas Licences

Classification of the Gas Licence Application		
Type of Licence Application	Distribution <input type="checkbox"/> Trading <input type="checkbox"/>	
For Distribution Licences	Distribution System Length	_____ kilometres
For Trading Licences	Number of small use customers	_____

## Water Licences

Classification of the Water Operating Licence Application		
Type of Licence Application	Potable <input type="checkbox"/> Non-Potable <input type="checkbox"/> Drainage <input type="checkbox"/> Irrigation <input type="checkbox"/> Sewerage <input type="checkbox"/>	
For all Water Operating Licence Classifications	Water System Length	_____ metres/kilometres (delete as applicable)
For all Water Operating Licence Classifications	Number of standard agreement customers	_____
For all Water Operating Licence Classifications	Number of non - standard agreement customers	_____

## Summary Description of Licence Activity

<b>Corporate Structure</b>	
Brief description of the applicant's structure and key organisational relationships	
<b>Services/service model</b>	
Brief description of service(s) or service model intended	
<b>Service infrastructure/works</b>	
Brief description of service infrastructure/works	
<b>Other regulatory approvals</b>	
Provide summary information on status of other essential regulatory approvals required	



## Areas to be covered by the licence

Designated area of the Licence Application	
Electricity Licence Area(s) and/or address to be covered by this licence.	Licence Area name: _____ Address/location: _____ _____
Gas Supply Area(s) to be covered by this licence	1 Kimberley <input type="checkbox"/> 2 Pilbara <input type="checkbox"/> 3 Gascoyne <input type="checkbox"/> 4 Mid-West <input type="checkbox"/> 5 Wheatbelt <input type="checkbox"/> 6 Goldfields-Esperance <input type="checkbox"/> 7 Great Southern <input type="checkbox"/> 8 Coastal <input type="checkbox"/>
Water Services Operating Area(s) and/or address to be covered by this licence.	Operating Area name: _____ Address/location: _____ _____

### **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 applicant<sup>8</sup>.

Name: .....

Position: .....

Signed: .....

Date: .....

<sup>8</sup> 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***  
***Energy Coordination Act 1994***  
***Water Services Licensing Act 1995***

## **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)* (**Electricity Act, Gas Act and Water Act**). 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 duplicate, together with 3 electronic copies of the information pack in a suitable format (i.e. hard copy, CD-ROM or USB drive). The amendment application fee must accompany the application.

If the applicant comprises more than one legal person (e.g. a Joint Venture), the information required in 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)*.

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 third party 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:

Information Commissioner  
Office of the Information Commissioner  
The Department of Premier and Cabinet  
12<sup>th</sup> Floor, St Martin's Tower  
44 St Georges Terrace  
PERTH WA 6000  
Phone Number: (618) 9222 7888  
Fax Number: (618) 9325 2152  
Country callers: (tel) 1800-621-244 (WA only)  
E-Mail Correspondence: [info@foi.wa.gov.au](mailto:info@foi.wa.gov.au)

Web: <http://www.foi.wa.gov.au>

The Authority recommends that applicants identify documents which may fall within the provisions of section 33 of the FOI Act, being documents that 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 material that is, under clause 4 of Schedule 1 of the FOI Act an exempt matter. If the Authority decides that this matter is an 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	
Mobile	
Fax	

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

<b>Amendment Details</b>	
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 applicant<sup>9</sup>.

Name: .....

Position: .....

Signed: .....

Date: .....

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<sup>9</sup> If signed on behalf of the applicant, please attach the relevant authority to bind the applicant.



## Licence Application Guidelines Version Control

<b>Version Date</b>	<b>Description of Changes</b>
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>
September 2011	General revision