

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

Electricity, Gas and Water Licences: Application Guideline and Forms

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. For further information, contact

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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, to ensure 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 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*, the *Energy Coordination Act 1994*, the *Water Services Licensing Act 1995* 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 of licence application summaries are also 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 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 that the Authority must consult with the party who has provided it with commercial or business information before providing access to this material to a third party.

Further, the Authority will not provide information to a third party 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 then 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
12th 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
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, or operating areas and term of licence.
- Information required for a licence application.
- How a licence is granted.
- Terms and conditions of licences.
- How applicants can 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**).
- 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 website at (<http://www.erawa.com.au>).

2. Who needs to apply for a licence?

Relevant legislation determines who needs to apply for a licence.

The relevant Acts 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**).

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 applies]

An electricity supply licence is required for participants in the electricity industry who intend to, or currently, generate, transmit, distribute or sell electricity unless they are 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 2A of the Gas Act applies]

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 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;and 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 applies]

A water services operating licence is required for participants in the water industry who 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 and 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/or non potable water supply);
- sewerage services;
- irrigation services; and
- drainage services.

A water services operating licence can include one or more of the service categories in one combined licence instrument.

2.4 Exemptions

A person or class of persons may be exempt from the requirement to hold a licence if the Governor of Western Australia 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 on the prescribed application form; a copy of which can be found on the Authority's website and in Appendix 2.

The Authority may require different amounts of information (including financial, technical and public interest aspects) 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;
- considerations in relation to public interest matters related to the proposed application;
- the impacts on customers;
- how the 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 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 annual fees

An annual licence fee is payable within one month of the grant of an electricity or gas licence and annually thereafter. Currently, there are no annual fees for water services operating licences. Also, 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 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 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].

A licence applicant should specify the proposed licence area in electricity and gas supply, or the operating area in the case of a water service, as part of the application.

The licence area or operating area must be shown on a map or maps and applicants should consult with the Authority on the development of the map(s). Where possible, map(s) should be sufficiently detailed to identify the location of any infrastructure and include cadastral boundaries. The map(s) should include any areas where infrastructure extends over other private or public land. In the case of retail or trading licences, applicants should provide map(s) of the areas where they intend to supply. Applicants can choose how to title the area on the map(s).

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

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

Examples of map(s) are found on the Authority's website and can be discussed with the Authority's licensing staff.

4.4 Term of licence

Applicants should specify the term (period) of licences and the reasons for that request. The Electricity Act allows a retail licence to be granted for up to 15 years. Any other classification of an electricity 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 a water services 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 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 on the application 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 additional information contained in the application. Therefore, it is important that any confidential business or commercial information supplied in the application is clearly identified as such.

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.

5.1 Application Summary

A summary of the application is required, which the applicant views as 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 other essential regulatory approvals required.
- A description of any public consultation or stakeholder engagement processes undertaken concerning the licence project.

The summary should not include material which is commercial in confidence and not suitable for publication. Applicants are encouraged to consult the Authority if uncertain about what to include in the application summary.

In addition to the summary, the application should include the information contained in sections 5.2 to 5.5 of these guidelines.

5.2 Corporate information

The following corporate information is required:

- Identity of the applicant, including the legal entity name and trading name and relevant ACN or ABN.
- The address and contact details of the entity, including the name and details of the primary person the Authority can contact regarding the licence.
- A description of the company structure including whether the applicant is a public company, group of companies, private company, joint venture, other body corporate, partnership, unincorporated association, sole trader or other entity. The description should also include the proportions of equity held by the individuals involved.
- Copies of any 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 applicant.
- 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 core activities.
- A list of any associated and/or controlled entities.
- A description that specifies any degree of control exercised by associated entities over the applicant and how that control is exercised. The application should include detailed information on any other entity the applicant intends to rely on to provide staff, services or resources to the licensed service.

5.3 Financial information

The Electricity and Gas Acts require that 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.

The Water Act requires that 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.

- The most recent audited general purpose financial report for the applicant (with accounts) that complies with the Australian Accounting Standards Board (AASB) Standards, including the auditor's report. Reporting entities, which 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 must comply with International Accounting Standards (IAS) if no accounts in Australian standards exist.

¹ This term applies to electricity and gas applications.

² 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) declaration.
- 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 financial standing/capacity commensurate with their potential financial exposure.
- If the applicant is a subsidiary company, audited general purpose financial reports should be provided that comply with the AASB Standards or AAS for the parent company(s) for the past 3 years.
- A copy of any other document, record or information that you have been required to submit to ASIC under chapter 2M of the *Corporations Act 2001* (Cwlth) over the past three years.
- Evidence of long and/or short term credit rating/s from a ratings agency.
- A description to 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 (e.g. alliance contracts, associate contracts, establishment contracts) that define relationships within the group including shared resources, guarantees, revenue flows, obligations and/or responsibilities.
- A written declaration from an independent auditor or your principal financial institution 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 unaware of any other factor that would impede their 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 licence relates.
- Projected revenue and expenditure figures for at least 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 licence 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 to be undertaken by the 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 resources³ or technical ability⁴ 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 (retail licence) 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)⁵.
- If the applicant proposes to supply gas to consumers (trading licence) 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)⁶.
- If the applicant proposes to provide water services, provide a copy of the applicant's Customer Service Charter.
- Where applicable, provide 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).

³ This term applies to electricity and gas applications.

⁴ This term applies to water services applications.

⁵ A retail licence can not be granted until the standard form contract is approved by the Authority.

⁶ A trading licence can not be granted until the standard form contract is approved by the Authority.

- Where applicable, provide evidence of compliance with relevant supply industry methods, quality, standards and codes including compliance with relevant consumer protection arrangements including:
 - The terms and conditions of any proposed standard customer contract.
 - A description on how customer accounts will be managed.
 - Provide details on customer information provision policies (e.g. tariffs, fees and charges), customer service charters, customer consultation processes, account enquiries processes, payment arrangements and hardship policies and procedures, complaints and dispute resolution processes, account termination procedures and customer performance measures.
 - Provide 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. 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 and/or operate and/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 detailed description of the asset management system is required (not required for an electricity retail licence or a gas trading licence) and 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 their associated or controlled entities 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 factors, 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 services 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, of the Water Act apply]

The Authority may grant an electricity or gas 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 can be 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 and Section 11S 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 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 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 a licensee's business activities.
- The methods or standards to be applied in supplying the service.
- Procedures for the amendment, revocation or surrender of a licence.
- Requirements for the provision of information by the licensee.
- The regulation of construction and/or operation of works and systems.
- 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.
- Provisions governing disposal and transfer of property and licences.

Applicants are encouraged to view relevant licences on the Authority's website to gain an appreciation of the terms and conditions that are likely to apply in their case.

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

[Section 130 of the Electricity Act, Section 11ZH 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:

- 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?

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).

10.1 Renew 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 Transfer 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, existing licence holders need the Authority's written approval. A transfer, made 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 and any applications should follow a similar format.

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 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.

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
- under the Water Act a water licence may be cancelled if a licensee has, within a period of 12 months been convicted of more than 3 offences.

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 of WA.

12. 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 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;* and
- *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;* and

- *Gas Marketing Code of Conduct.*

Water

- *Water Services Licensing Act 1995;*
- *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 and;*
- *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/index.html>.

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 the whole application. 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 application for a licence.

The Authority is bound by the *Freedom of Information Act 1992 (WA)* (**FOI Act**). Section 33 of the FOI Act requires that the Authority must consult with the party who has provided it with commercial or business information before providing access to this material to a third party.

Further, the Authority will not provide information to a third party 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
Office of the Information Commissioner
The Department of Premier and Cabinet
12th 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

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

For this reason, the Authority recommends that applicants identify documents that 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 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	
Telephone	
Mobile	
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 Licence(s)

Classification of the Water Operating Licence Application		
Type of Licence Application	Water Supply (Potable) Water Supply (Non-Potable) Drainage Services Irrigation Services Sewerage Services	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
For all Water Services 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

Corporate Structure	
Brief description of the applicant's structure and key organisational relationships	
Services/service model	
Brief description of service(s) or service model intended	
Service infrastructure/works	
Brief description of service infrastructure/works	
Other regulatory approvals	
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 applicant⁷.

Name:

Position:

Signed:

Date:

⁷ 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 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 duplicate, together with 3 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 the *Freedom of Information Act 1992 (WA)* (**FOI Act**). Section 33 of the FOI Act requires that the Authority must consult with the party who has provided it with commercial or business information before providing access to this material to a third party.

Further, the Authority will not provide information to a third party 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
Office of the Information Commissioner
The Department of Premier and Cabinet
12th Floor, St Martin's Tower
44 St Georges Terrace
PERTH WA 6000
Phone Number: (618) 9222 7888
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Country callers: (tel) 1800-621-244 (WA only)
E-Mail Correspondence: info@foi.wa.gov.au
Web: <http://www.foi.wa.gov.au>

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 an 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	
Primary Contact Name	
Mail Address	
Email	
Telephone	
Mobile	
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 applicant⁸.

Name:

Position:

Signed:

Date:

⁸ 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>
September 2011	General revision