



ESSENTIAL SERVICES COMMISSION

ELECTRICITY GENERATION AND SALE LICENCE

Loy Yang A Power Station

**AGL Generation Proprietary Limited
(ACN 155 344 077)**

**AGL Generation Holdco Pty Ltd
(ACN 155 768 291)**

**AGL Loy Yang Pty Ltd
(ACN 077 985 758)**

**AGL Loy Yang Marketing Pty Ltd
(ACN 105 758 316)**

**As varied on
28 April 2020**

ELECTRICITY GENERATION AND SALE LICENCE

This Licence is issued pursuant to section 19 of the *Electricity Industry Act 2000* (Vic) and is subject to the terms set out in this Licence.

Date

This Licence first had effect on 8 April 2004 and has been varied on the dates set out in Schedule 1.

Licensees

This Licence is issued to:

AGL Generation Proprietary Limited (ACN 155 344 077)

AGL Generation Holdco Pty Ltd (ACN 155 768 291)

AGL Loy Yang Pty Ltd (ACN 077 985 758)

AGL Loy Yang Marketing Pty Ltd (ACN 105 758 316)

THE COMMON SEAL of the
ESSENTIAL SERVICES COMMISSION
was affixed pursuant to the authority
of the Commission

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Kate Symons

Chairperson

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Part A – Definitions and Interpretation

1. Definitions

1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

Act	the <i>Electricity Industry Act 2000</i> (Vic)
administrator	an administrator appointed by the Commission under section 34 of the Act
AEMO	Australian Energy Market Operator (ACN 072 010 327)
business day	a day other than a Saturday, Sunday or a public holiday in Victoria
change of control	a change of control occurs if a shareholder of an entity, at the time it becomes a shareholder: <ul style="list-style-type: none"> (a) does not have the capacity to control the composition of the board of directors of the entity or a holding company of that entity; (b) is not in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of that entity or a holding company of that entity; or (c) does not beneficially hold more than 50% of the issued share capital of the entity or a holding company of that entity, subsequently has the ability to do so, or does so, provided that no change of control will be deemed to have occurred where: <ul style="list-style-type: none"> (d) the ultimate holding company of that entity remains the same as its ultimate holding company (if any) on the date upon which the shareholder first became a shareholder; or (e) the change of control results from the acquisition or cancellation of, or dealing in, securities which are traded on a recognised financial market
variation commencement date	21 April 2020
Commission	the Essential Services Commission established under the ESC Act
control	in respect of an entity has the same meaning given in section 50AA of the Corporations Act
Corporations Act	means the <i>Corporations Act 2001</i> (Cth)
Electricity Distribution Code	the code of that name certified by the Commission

Electricity System Code	the code of that name certified by the Commission
enforcement order	a provisional enforcement order or a final enforcement order made and served by the Commission under section 53 of the ESC Act
ESC Act	the <i>Essential Services Commission Act 2001 (Vic)</i>
final enforcement order guideline	a final order made under section 53 of the ESC Act a guideline published by the Commission
Holding Company	means, in relation to an entity, an entity of which the first entity is a subsidiary
Licensed generation facility	Loy Yang A Power Station
Licensees	AGL Generation Proprietary Limited (ACN 155 344 077) AGL Generation Holdco Pty Ltd (ACN 155 768 291) AGL Loy Yang Pty Ltd (ACN 077 985 758) AGL Loy Yang Marketing Pty Ltd (ACN 105 758 316)
Minister	the person who is, from time to time, the Minister for the purposes of the relevant section of the Act
National Electricity Law	the National Electricity (Victoria) Law which applies in Victoria as a result of the operation of section 6 of the <i>National Electricity (Victoria) Act 2005 (Vic)</i>
National Electricity Rules	the rules of that name made under the National Electricity Law
objectives	the objectives of the Commission under the Act and the ESC Act
order	an Order in Council made or in force under the Act
provisional enforcement order	a provisional order made and served by the Commission under section 53 of the ESC Act
subsidiary	has the meaning given in the Corporations Act
Ultimate Holding Company	means, in relation to an entity, an entity that: (a) is a holding company of the first-mentioned entity; and (b) is itself a subsidiary of no entity
undertaking	an undertaking given by the Licensees or a Licensee under section 53(5)(a) of the ESC Act
wholesale electricity market	has the same meaning as in the Act
writing	any mode of representing or reproducing words, figures, drawings or symbols in a visible form

total generating capacity entitlement the aggregate of all entitlements to generating capacity of the Licensees within the meaning of Part 3 of the Act

- 1.2. In this Licence, unless the context otherwise requires:
- (a) headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
 - (b) words importing the singular include the plural and vice versa;
 - (c) words importing a gender include any gender;
 - (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
 - (e) a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
 - (f) a reference to any statute including the Act and regulations, proclamation, Order in Council, ordinance or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ordinances, by-laws and determinations issued under that statute;
 - (g) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
 - (h) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
 - (i) other parts of speech and grammatical forms of a word or phrase defined in this Licence have a corresponding meaning;
 - (j) a period of time:
 - (1) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (2) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
 - (k) an event which is required under this Licence to occur on or by a stipulated day which is not a business day may occur on or by the next business day.

2. Notices

- 2.1. A notice under this Licence is only effective if it is in writing, and dealt with as follows:

- (a) if given by the Licensees to the Commission – addressed to the Chief Executive Officer of the Commission at the address specified below or as otherwise notified by the Commission:

Essential Services Commission, Level 37, 2 Lonsdale Street,
Melbourne VIC 3000; or

- (b) if given by the Commission to the Licensees – given by the Chief Executive Officer of the Commission and addressed to (and marked for attention of) the Chief Executive Officer of AGL Generation Holdco Pty Ltd at the address specified below or as otherwise notified by the Licensees:

AGL Generation Holdco Pty Ltd, Level 24, 200 George Street,
Sydney, NSW, 2000.

2.2. A notice is to be:

- (a) signed by or on behalf of the person giving the notice and delivered by hand; or
(b) signed by or on behalf of the person giving the notice and sent by pre-paid post; or
(c) transmitted electronically by or on behalf of the person giving the notice by electronic mail or facsimile transmission.

2.3. A notice is deemed to be effected:

- (a) if delivered by hand – upon delivery to the relevant address;
(b) if sent by post – upon delivery to the relevant address;
(c) if transmitted electronically – in accordance with the method set out in the *Electronic Transactions (Victoria) Act 2000 (Vic)* for determining the time of receipt.

2.4. A notice received after 5.00 pm, or on a day that is not a business day, is deemed to be effected on the next business day.

Part B - Licence

3. Grant of the Licence

- 3.1. In exercise of its powers under section 19 of the Act, the Commission grants the Licensees a Licence to generate electricity for supply or sale, and to supply and sell electricity, on the terms and conditions set out in this Licence with effect from the variation commencement date.
- 3.2. Under this Licence, the Licensees may only generate electricity for supply or sale at the licensed power station, and may only supply or sell electricity generated at the licensed power station through the wholesale electricity market.
- 3.3. The obligations of the Licensees under the conditions of this Licence are joint and several obligations of each Licensee.

- 3.4. Each Licensee must ensure each other Licensee complies with the conditions of this Licence.

Part C - Conditions of the Licence

4. Status of the requirements in this Part

- 4.1. A failure on the part of the Licensees to meet any of the requirements set out in this Part C:
- (a) is a breach of a condition for the purposes of Part 7 of the ESC Act; and
 - (b) is a breach of a condition for the purposes of clause 12 of this Licence.
- 4.2. The Licensees acknowledge that any condition deemed by the Act to be included in a licence to generate electricity for supply or sale, forms part of this Licence and that a breach of any such condition constitutes a breach of a condition for the purposes of clause 12 of this Licence.

5. Payment of fees

- 5.1. The Licensees must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.

6. Ongoing technical capacity

- 6.1. The Licensees must at all times maintain:
- (a) such technical capacity as is:
 - (1) required to meet the obligations under this Licence; and
 - (2) reasonably required to undertake the activities authorised by this Licence; and
 - (b) such additional technical capacity as is reasonably required to enable it to meet and utilise technological advances in the electricity industry.
- 6.2. In this clause 6, activities undertaken pursuant to this Licence include any activities undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by a Licensee for the purpose of enabling the Licensees to undertake the activities authorised by this Licence.
- 6.3. The Licensees must ensure that any contract entered into with any third parties for the performance of licensable functions, contains such provisions as are necessary to ensure the third party provides its services in a way that enables the Licensees to comply with the requirements of this Licence and this clause 6.

7. Ongoing financial capacity

- 7.1 The Licensees must at all times remain financially viable to undertake the licensed activity.

8. Compliance with regulatory instruments

- 8.1. Subject to clause 8.2, the Licensees must comply with:
- (a) the Electricity Distribution Code;
 - (b) the Electricity System Code;
 - (c) relevant industry standards; and
 - (d) any other code, procedure or guideline issued by the Commission from time to time that is expressed as being one with which the Licensees must comply,

to the extent they are applicable to activities undertaken by the Licensees pursuant to this Licence.

- 8.2. The Commission may, from time to time, by written notice grant an exemption in relation to or otherwise modify the application of some of the requirements of the instruments referred to in clause 8.1.
- 8.3. The Licensees must have in place an adequate system for monitoring compliance with this Licence and the instruments referred to in clause 8.1.
- 8.4. The Licensees must comply with the relevant requirements of the *Electricity Safety Act 1998 (Vic)* and any regulations made under that Act.
- 8.5. The Licensees must comply with the National Electricity Rules and the National Electricity Law.
- 8.6. The Licensees must register with AEMO, or be exempted from the requirement to be registered, in accordance with the National Electricity Rules.

9. Compliance with Laws

- 9.1. The Licensees must comply with all applicable laws.

10. Separate accounts

- 10.1. If a Licensee holds more than one category of licence under Part 2 of the Act, the Licensee must prepare separate accounts for each activity or part of its business in respect of which it has been granted a separate licence.

11. Provision of information

- 11.1. The Licensees must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.
- 11.2. The Licensees must notify the Commission of any breach of the conditions of this Licence including any of the instruments referred to in

clause 8.1 as soon as reasonably practicable after becoming aware of the breach.

- 11.3. The Licensees must as soon as reasonably practicable provide AEMO with such information, relating to activities undertaken pursuant to this Licence, as AEMO may properly request in connection with the performance of its functions or the exercise of its powers in the manner and form specified by AEMO.
- 11.4. The Licensees must, as soon as reasonably practicable, provide the Commission with such information, relating to activities undertaken pursuant to this Licence, as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by the Commission.
- 11.5. The Licensees must, as soon as reasonably practicable, provide the Commission with information as to their ongoing technical capacity or financial viability to undertake the activities authorised by this Licence as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act and in a manner and form specified by the Commission.
- 11.6. In this clause 11:
- (a) activities undertaken pursuant to this Licence includes any activities of that type undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensees for the purpose of enabling the Licensees to undertake the activities authorised by this Licence; and
 - (b) information includes information in the possession, custody or control of any third party.
- 11.7. The Licensees must ensure that any contract entered into with any third parties for the performance of licensable functions, contains such provisions as are necessary to ensure the third party provides its services in a way that enables the Licensees to comply with the requirements of the Licence.
- 11.8. ***Change of control***
- (a) the Licensees must give the Commission a notice if any event occurs, any decision is made, or any other circumstances exists that will effect a change of control of a Licensee.
 - (b) the notice required under condition 11.8(a) must set out particulars of the relevant event, decision or circumstance as soon as practicable, and in any case not later than 3 Business Days after a Licensee becomes aware of the event or circumstance or makes the decision.

12. **Revocation**

- 12.1. The Commission may revoke this Licence:
- (a) at any time at the request of or with the consent of the Licensees; or

(b) in accordance with the Act.

12.2. Consistent with its objectives under the Act and the ESC Act, the Commission may revoke this Licence if:

- (a) the Licensees fail to comply with an undertaking or a final enforcement order;
- (b) the Licensees breach any condition of this Licence, including any condition deemed to apply by the Act or any other applicable legislation;
- (c) any information provided by the Licensees pursuant to this Licence or in the application for the Licence is found to be materially false or misleading;
- (d) the Licensees' technical capacity or financial viability is such that the Commission considers that the Licensees would be unable to satisfactorily meet the obligations under this Licence;
- (e) the Licensees fail to comply with a decision, direction, determination or arrangement (including any arrangement concerning load shedding) (as the case may be) made by or agreed with the Commission, AEMO, or the Minister;
- (f) following any one of the following events:
 - (1) a petition or other application being presented or resolution being passed for the winding up, liquidation or dissolution of a Licensee or notice of intention to propose such a resolution being given or the entry of a Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;
 - (2) the appointment of an administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensees' property;
 - (3) a Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;

the Commission determines that the event, or actions arising from an event, would, or would be likely to, result in the inability of the Licensees to meet any obligations under this Licence.

12.3. Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensees, specifying:

- (a) the basis upon which the Commission is revoking this Licence; and
- (b) the date upon which the revocation will take effect, such date to be:
 - (1) where clause 12.2(a) applies or where in the Commission's opinion it is appropriate that the Licence be revoked in a shorter time frame having regard to its objectives and the events or circumstances that gave rise to the notice being issued, no less

than 5 business days after the date upon which the notice is issued; and

- (2) in all other cases, no less than 20 business days after the date upon which the notice is issued,

and, subject to clause 12.4, this Licence will be revoked on the date specified in the notice.

- 12.4. The Commission may, at its discretion and by written notice to the Licensees, withdraw a notice issued under clause 12.3 at any time prior to the revocation date specified in the notice if the Commission is satisfied that the Licensees have complied with the relevant final enforcement order or undertaking, rectified the breach or complied with the relevant decision, direction, determination or arrangement (as the case may be) or if the Commission considers that it is otherwise appropriate to withdraw the notice.

13. Variation

- 13.1. For the purposes of section 29(1)(a) of the Act, the Commission may vary this Licence in accordance with the procedures set out in this clause 13.

- 13.2. Where the Commission:

- (a) wishes to amend the list of instruments referred to in clause 8.1; or
- (b) is of the opinion that a proposed variation to the Licence is consistent with its objectives and is:
 - (1) of an administrative or trivial nature; or
 - (2) required urgently, such that it would not be appropriate to issue a notice under section 29(1)(c) of the Act,

the Commission may issue a notice to the Licensees varying this Licence accordingly.

- 13.3. A notice issued under clause 13.2 will include:

- (a) the terms of the variation;
- (b) the purpose of the variation;
- (c) where clause 13.2(b)(2) applies, confirmation that the Commission is of that opinion; and
- (d) the date upon which the variation will take effect.

14. Transfer

- 14.1. This Licence may be transferred in accordance with section 31 of the Act.

15. Audit

- 15.1. Upon request by the Commission, the Licensees must appoint an auditor to be approved by the Commission to conduct audits of:

- (a) the Licensee's compliance with its obligations under the Act or this Licence, including but not limited to the codes, procedures and guidelines referred to in clause 8.1; and
- (b) the reliability and quality of information reported by the Licensee to the Commission and the consistency of that information with the Commission's specifications; and
- (c) any other matter applicable to assessing the adequacy of compliance by the Licensees pursuant to this Licence as directed by the Commission.
- 15.2. The Licensees must ensure that the Commission is promptly provided with a copy of any reports produced by the auditor pursuant to this clause. The Licensees must comply, and must require the auditor to comply, with any guidelines issued by the Commission dealing with audits under this clause. The Licensees must also provide draft reports if requested by the Commission.

16. Administrator

- 16.1. Subject to clause 12, if an administrator is appointed to the Licensees' business under section 34 of the Act, the administrator must exercise its functions and powers in such a manner as may be specified by the Commission in the instrument of appointment.

Schedule 1 – Variations to the Licence

Date	Variation
14 January 2005	To make various administrative and substantive amendments following a review by the Commission of electricity generation, distribution and retail licences.
28 April 2020	To effect a transfer of the licence, pursuant to section 31 of the Electricity Industry Act, from AGL LYP 1 Pty Ltd (ACN 078 121 187); AGL LYP 2 Pty Ltd (ACN 078 377 572); AGL LYP 3 Pty Ltd (ACN 078 377 572); and AGL LYP 4 B.V. (ARBN 073 074 530) to AGL Holdco Pty Ltd (ACN 155 768 291) and AGL Generation Proprietary Limited (ACN 155 344 077), and to make various administrative and substantive amendments to the licence conditions.