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Submitted One electronic copy via [licensing@esc.vic.gov.au](mailto:licensing@esc.vic.gov.au) and one hardcopy in the mail

25 October 2019

## Application for electricity generation licence transfer

Dear Stephen

### 1. Background

We refer to Electricity Generation Licence EG\_01/2004, which was issued on 8 April 2004 and varied on 14 January 2005 (**LY Generation Licence**).

In accordance with clause 11 of the LY Generation Licence, the licensee may transfer the licence in accordance with section 31 of the Electricity Industry Act 2001 (Vic). This application is to transfer the LY Generation Licence from the existing partners comprising the AGL Loy Yang Partnership to AGL Generation Holdco Pty Ltd ACN 155 768 291 and AGL Generation Proprietary Limited ACN 155 344 077 as the new partners comprising the AGL Loy Yang Partnership (together, the **Proposed Transferees**) (**Proposed Transfer**).

In support of this application, the following materials are enclosed in the schedules:

- 1 draft transfer of licence form;
- 2 statutory declaration;
- 3 a structure diagram of the proposed restructure;
- 4 a copy of Electricity Generation Licence for Loy Yang A; and
- 5 audited financials for the year ending 30 June 2019 for AGL Generation Holdco Pty Ltd and AGL Generation Pty Limited.

### 2. Information about the application and the transferor

#### 2.1 Transferor details

The AGL Loy Yang Partnership (AGL LYP) is a general law partnership currently comprising four partners, each of which is a corporation incorporated in Australia or the Netherlands as follows:

- (a) AGL LYP 1 Pty Ltd ACN 078 121 187 (LYP 1) (Australia);
- (b) AGL LYP 2 Pty Ltd ACN 078 377 572 (LYP 2) (Australia);



- (c) AGL LYP 3 Pty Ltd ACN 078 377 527 (LYP 3) (Australia); and
- (d) AGL LYP 4 B.V. ARBN 073 074 530 (LYP 4) (Netherlands).

Each of LYP 1, LYP 2, LYP 3 and LYP 4 is indirectly wholly owned by the Proposed Transferees. Each of the entities comprising the AGL LYP and the Proposed Transferees are subsidiaries of AGL Energy Limited ACN 115 061 375 (**AGL Energy**).

The existing partners comprising the AGL LYP together with AGL Loy Yang Pty Ltd ACN 077 985 758 (**AGL Loy Yang**) and AGL Loy Yang Marketing Pty Ltd ACN 105 758 316 (**AGL Loy Yang Marketing**) are licensees of the LY Generation Licence. The LY Generation Licence permits the licensee to:

- (a) generate electricity for supply and sale at; and
- (b) supply and sell electricity at,

the Loy Yang A Power Station.

The AGL LYP owns Loy Yang A and the Loy Yang mine. AGL Loy Yang is the operator of Loy Yang A, employs the employees who work in the mine and power station, and enters into operating contracts on behalf of the AGL LYP. AGL Loy Yang Marketing is the intermediary registered in the National Electricity Market (NEM) responsible for bidding and dispatch.

## 2.2 Transfer of partnership interests

AGL is implementing a restructure of the group of corporate entities which collectively own the Loy Yang A power station and the Loy Yang mine (**Restructure**). The objective of the Restructure is to simplify the ownership structure, including by removing LYP 4 (the Dutch entity) from the ownership structure and ensuring Loy Yang A is owned only by Australian incorporated entities (being AGL Generation Proprietary Limited and AGL Generation Holdco Pty Ltd).

The following steps, which are also illustrated in the Structure Diagram (Schedule 3), are proposed as part of the Restructure:

### Step 1

- (a) LYP 1 transfers all of its interests in the AGL LYP to AGL Generation Proprietary Limited, resulting in AGL Generation Proprietary Limited holding a 25% interest in the AGL LYP.
- (b) Each of LYP 2, LYP 3 and LYP 4 transfer all of their interests in the AGL LYP to AGL Generation Holdco Pty Ltd, resulting in AGL Generation Holdco Pty Ltd holding a 75% interest in the AGL LYP.

### Step 2

Surplus entities LYP 1, LYP 2, LYP 3 and LYP 4 will be liquidated or deregistered and removed from the corporate structure.

The Restructure will not change the ultimate ownership of the Loy Yang A power station or the Loy Yang mine and will have no impact on the operation of Loy Yang A or the Loy Yang mine.

## 3. The Commission's objectives

Subsection 8(1) of the Essential Services Commission Act 2001 (Vic) (**ESC Act**) provides that in performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers. Further to this, subsection 8A(1) of the ESC Act provides that in seeking to achieve its objective, the Commission must have regard to the following matters (amongst others) to the extent they are relevant:





- (a) efficiency in the industry and incentives for long term investment;
- (b) the financial viability of the industry;
- (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries; and
- (d) the relevant health, safety, environmental and social legislation applying to the industry.

On the basis that, as set out in section 5, the operation or management of Loy Yang A will not change as a result of the Restructure, approval of the transfer of the licence is consistent with these objectives. The effective completion of the Restructure meets the objectives listed above. Further, the objectives of the Restructure to simplify the ownership of Loy Yang A and ensure that the generation licence and all associated licences are held by Australian entities are also consistent with the Commission's objectives.

#### **4. Fit and proper persons**

The Proposed Transferees are fit and proper persons to hold a Victorian electricity licence. The Proposed Transferees are subsidiaries of AGL Energy, and the directors of each subsidiary are AGL Energy executives. The honesty, integrity, reputation and suitability of the AGL LYP, its directors, office holders and related entities will not change as a result of the Restructure.

#### **5. Information regarding financial viability and technical capacity**

As outlined above, following the Restructure, AGL Energy will continue to ultimately own the Loy Yang A power station and the Loy Yang mine. AGL Energy has more than 180 years of experience and operates Australia's largest electricity generation portfolio with 10,245 MW of operated capacity and 3.7 million customer accounts. AGL Energy continues to invest in the Loy Yang A power station and the Loy Yang mine to ensure that Loy Yang A remains a safe, reliable and competitive supplier to the NEM over the remaining years of its life.

The Restructure and Proposed Transfer will not have any impact on the AGL LYP's technical or financial ability to meet its obligations under the LY Generation Licence or to operate the Loy Yang A power station and the Loy Yang mine. We note that:

- (a) the Proposed Transferees have the same financial viability and technical capacity as the existing partners of AGL LYP, as the existing partners are wholly owned subsidiaries of the Proposed Transferees and all the assets of the existing partners will transfer to the Proposed Transferees;
- (b) the Restructure and Proposed Transfer will not impact the ultimate ownership of the Loy Yang A power station or the Loy Yang mine;
- (c) all approvals and contracts held by the existing partners comprising the AGL LYP in relation to the Loy Yang A power station and the Loy Yang mine (such as the mining licence) will be transferred to the new partners of the AGL LYP;
- (d) other than a change in direct ownership, the Restructure and Proposed Transfer will not impact AGL Loy Yang as operator or the way in which the Loy Yang A power station and Loy Yang Mine are operated;
- (e) the employment arrangements of all executives and employees of Loy Yang A will remain unchanged; and



- (f) AGL Loy Yang Marketing is, and will continue to be, registered with the Australian Energy Market Operator as an intermediary for the AGL LYP as a Generator pursuant to Rule 2.4 of the National Electricity Rules.

Information pertinent to financial viability of the Proposed Transferees is available in the 2019 Annual Report for AGL Energy Limited and in the audited financials for the year ending 30 June 2019 for each of AGL Generation Holdco Pty Ltd and AGL Generation Proprietary Limited (Schedule 5).

## 6. Timing

Approval is sought on the basis that the Proposed Transfer will only take effect from completion of the Restructure.

Yours sincerely,

A grey rectangular box redacting the signature of the sender.

Kong Min Yep  
Wholesale Regulation Compliance Manager  
AGL Energy Ltd

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## Schedule 1

### Application for licence transfer

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#### Transfer of Licence

#### Section 31 of the *Electricity Industry Act 2001 (VIC)*

Under the approval of the Essential Services Commission, the Transferor transfers to the Transferee the estate and interest in the Licence described for the consideration expressed.

Date of the approval of the Essential Services Commission, the.....day of .....2019<sup>1</sup>

Licence                      Electricity Generation Licence EGHPP0S/03

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Consideration:            As set out in the Partnership Interest Transfer Agreement  
[Commercial in confidence]

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Transferors:                AGL LYP 1 Pty Ltd ACN 078 121 187;  
AGL LYP 2 Pty Ltd ACN 078 377 572;  
AGL LYP 3 Pty Ltd ACN 078 377 527; and  
AGL LYP 4 B.V. ARBN 073 074 530.

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Transferees<sup>2</sup>              AGL Generation Holdco Pty Ltd ACN 155 768 291; and  
AGL Generation Proprietary Limited ACN 155 344 077.

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Date: [Insert date]

Execution and attestation

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<sup>1</sup> Approval is sought on the basis that the Proposed Transfer will be effective from completion of the Restructure.

<sup>2</sup> For the avoidance of doubt, AGL Loy Yang Pty Ltd ACN 077 985 758 and AGL Loy Yang Marketing Pty Ltd ACN 105 758 316 will remain licensees.



**Transferor**

Signed by  
**AGL LYP 1 Pty Ltd**  
by

<i>sign here</i> ▶ _____	<i>sign here</i> ▶ _____
Company Secretary	Director
<i>print name</i> Melinda Hunter	<i>print name</i> Damien Nicks
_____	_____

**Transferor**

Signed by  
**AGL LYP 2 Pty Ltd**  
by

<i>sign here</i> ▶ _____	<i>sign here</i> ▶ _____
Company Secretary	Director
<i>print name</i> Melinda Hunter	<i>print name</i> Damien Nicks
_____	_____

**Transferor**

Signed by  
**AGL LYP 3 Pty Ltd**  
by

<i>sign here</i> ▶ _____	<i>sign here</i> ▶ _____
Company Secretary	Director
<i>print name</i> Melinda Hunter	<i>print name</i> Damien Nicks
_____	_____



**Transferor**

Signed by

**AGL LYP 4 B.V.**

by

*sign here*



\_\_\_\_\_

Director

*print  
name*

Damien Nicks

\_\_\_\_\_

**Transferee**

Signed by

**AGL Generation Holdco Pty Ltd**

by

*sign here*



\_\_\_\_\_

Company Secretary/Director

*print  
name*

\_\_\_\_\_

*sign here*



\_\_\_\_\_

Director

*print  
name*

\_\_\_\_\_



**Transferee**

Signed by

**AGL Generation Proprietary  
Limited**

by

*sign here*



\_\_\_\_\_

Company Secretary/Director

*sign here*



\_\_\_\_\_

Director

*print  
name*

\_\_\_\_\_

*print  
name*

\_\_\_\_\_





## Schedule 2

### Statutory Declaration

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I, Kong Min Yip, make the following statutory declaration under the Oaths and Affirmations Act 2018:

- 1 Declare that the information contained in this application, and attachments thereto upon which I have placed my signature, for the transfer of Electricity Generation Licence number EG\_01/2004 under the Electricity Industry Act 2001 is true and correct.

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.



Declared at Melbourne, in the State of Victoria on 25th of October 2019

sign here ▶



Signature of person making this statutory declaration in the presence of the authorised statutory declaration witness

Before me

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration

sign here



Signature of authorised statutory declaration witness

on **[insert date]** 25 OCT 2019

print name THUAN-CHAN KEE

print address \_\_\_\_\_

print title GM Legal - Customer Markets  
Future Business & Technology

Corporate Lawyer  
Level 3, 699 Bourke St, Docklands VIC 3008  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

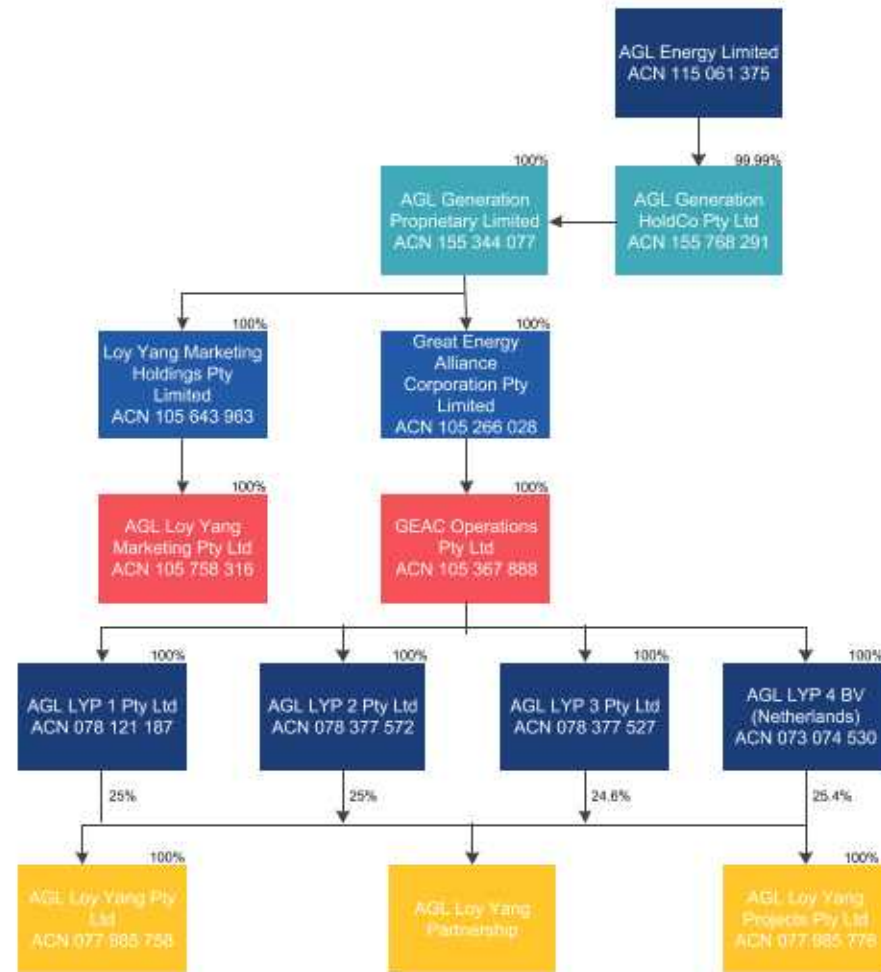
**[full name and personal or professional address of authorised statutory declaration witness in legible writing, typing or stamp]**

**[qualification as an authorised statutory declaration witness]**

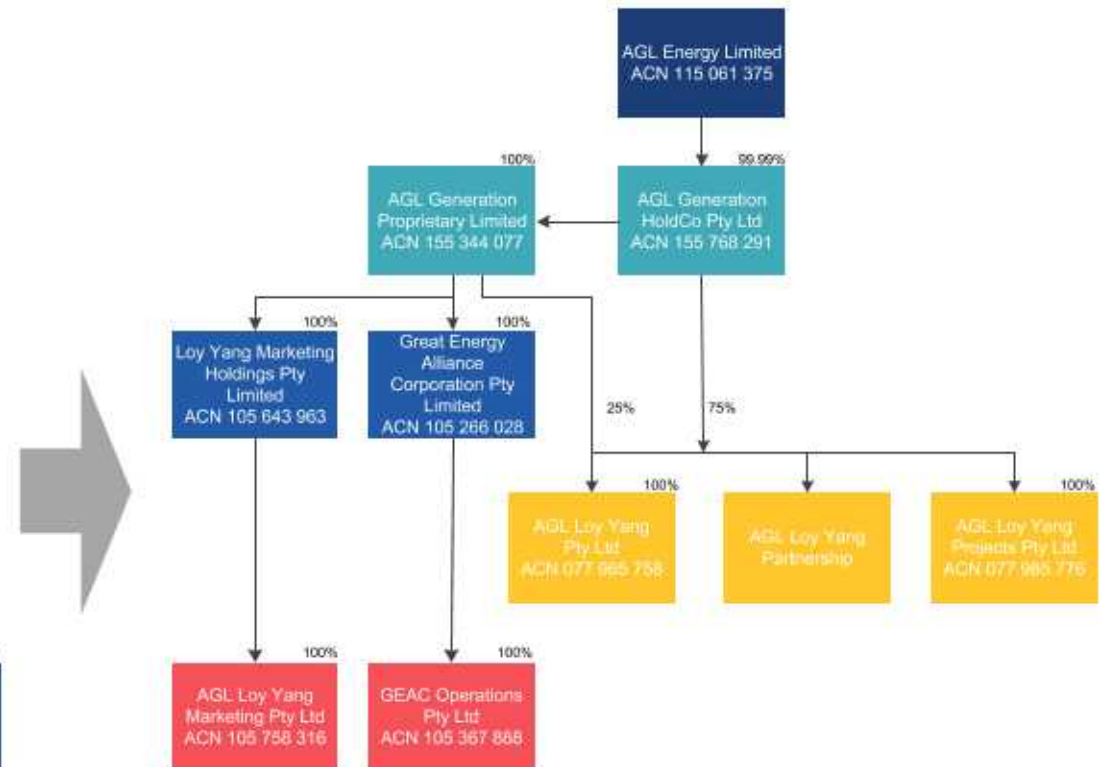
A person authorised under section 30(2) of the *Oaths and Affirmations Act 2018* to witness the signing of a statutory declaration.

Structure Diagram

Current Structure



Structure post simplification





## Schedule 4

### Electricity Generation Licence for Loy Yang A

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A copy is attached with the application.





## Schedule 5

Audited financials for AGL Generation Holdco Pty Ltd and AGL  
Generational Proprietary Limited for year ended 30 June 2019

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Copies are attached with the application.