

# **ELECTRICITY INDUSTRY ACT 2000**

## **EXEMPTION ORDER UNDER SECTION 17**

### **ORDER IN COUNCIL**

The Governor in Council acting under section 17 of the **Electricity Industry Act 2000** (the "Act") hereby makes the following Order:

#### **1. Date of effect**

This Order comes into effect on 1 May 2002.

#### **2. Exemptions**

A person identified in Column 1 of the Schedule, or falling within a class of persons identified in Column 1 of the Schedule, is exempt from the requirement to obtain a licence under section 16 of the Act in respect of each activity identified opposite that person's name, or the class of persons in which that person is included, in Column 2 of the Schedule, subject in each case to the terms, conditions and limitations (if any) specified in Column 2 of the Schedule.

#### **3. Revocation of Existing Orders**

The General Exemption Order is revoked on 1 May 2002. It is the intention of this Order not to affect the revocations made by the General Exemption Order.

#### **4. Definitions**

In this Order, including the Schedule, the following terms have the following meanings unless the contrary intention appears:

**"approved meter"** means any device that is of a type that the holder of a licence under the Act is permitted by law to use to measure consumption of electricity for the type of person to whom electricity is being transmitted, distributed, supplied or sold;

**"Distribution Code"** means the Electricity Distribution Code from time to time approved by the Essential Services Commission;

**"Electricity Customer Metering Code"** means the Electricity Customer Metering Code from time to time approved by the Essential Services Commission;

**"ETSA Utilities"** means ETSA Utilities Pty Ltd (ACN 082 711 895) and any person who in accordance with the laws of South Australia succeeds to the entitlements of ETSA Utilities;

**“General Exemption Order”** means the Order made under section 160 of the Electricity Industry Act 1993 and published in the Government Gazette on 27 June 1996 and varied by an Order made on 19 December 2000 and published in Government Gazette G51 on 21 December 2000;

**"generation"** includes co-generation;

**"Hume Power Station Agreement"** means the agreement for the construction, operation and maintenance of the Hume power station and associated works between the State Electricity Commission of Victoria and the Electricity Commission of New South Wales dated 25 July 1957;

**"intermediary distribution or supply"**, in relation to a supply of electricity to a customer, means the conveyance of electricity through facilities of a person other than a distribution company after the electricity leaves a supply facility owned or operated by a distribution company and before being supplied to the customer in premises of a kind which, as at the date of this Order, it is customary for electricity to be so supplied;

**“kVa”** means means 1,000 volt amps;

**“large business customer”** means a person to whom peak demand of not less than 500 kVa, or consumption of not less than 160MWh per annum, is distributed, supplied or sold for commercial or industrial purposes;

**“licensed electricity distributor”** means the holder of a licence to distribute or supply electricity under the Act;

**"licensed retailer"** means the holder of a licence to sell electricity under the Act otherwise than through the wholesale electricity market;

**"long term resident"** has the same meaning as **“resident”** in the Residential Tenancies Act 1997 and the Retirement Villages Act 1986, but does not include a person who was a resident of a retirement village but who has left the retirement village or who has died, or their legal personal representative;

**"metered intermediary sale of electricity"** means the sale of electricity by a customer of a licensed retailer to a short term resident, long term resident, small business customer or large business customer where consumption by each such person is measured by an approved meter;

**"Minister"** means the Minister responsible for the Electricity Industry Act 2000;

**"MW"** means megawatts;

**“MWh”** means megawatt hours;

**“National Electricity Code”** has the meaning given to “Code” in the National Electricity (Victoria) Law as defined in the National Electricity (Victoria) Act 1997;

**"related body corporate"** has the same meaning as in the Corporations Act;

**"Pricing Rule"** means the price or prices determined by reference to clause 7 of this Order;

**"Retail Code"** means the Electricity Retail Code from time to time approved by the Essential Services Commission;

**“short term resident”** means any person, other than a person who is a long term resident, who resides in a premises used for residential purposes only (such as a retirement village, a rooming house or a site in a caravan park) whether or not on a temporary or intermittent basis;

**“small business customer”** means a person to whom peak demand of less than 500kVa, and consumption of less than 160MWh per annum, is distributed, supplied or sold for commercial or industrial purposes;

**“Snowy Mountains Hydro-electric Agreement”** means the agreement for the construction, operation and maintenance of the Snowy Mountains Hydro-electric Scheme between the Commonwealth of Australia, the State of New South Wales and the State of Victoria dated 18 September 1957;

**“Special Power Payment rebate”** means the payments made by licensed retailers to certain customers, in accordance with the scheme implemented by the Minister and administered by VENCORP to reduce the electricity bills payable by those customers;

**“System Code”** means the Electricity System Code from time to time approved by the Essential Services Commission;

**“VENCORP”** means the Victorian Energy Networks Corporation subsisting under section 158 of the Gas Industry Act 2001.

## **5. Certification by Commission**

The Essential Services Commission may, on application by any person whose interests are affected, issue a certificate stating that, in the opinion of the Essential Services Commission, a particular activity does or does not constitute:

- (a) the intermediary distribution or supply of electricity; or
- (b) the metered intermediary sale of electricity,

and, if it does so, that activity does or does not, as applicable, constitute the intermediary distribution or supply of electricity or the metered intermediary sale of electricity, as the case may be, for the purposes of this Order.

## **6. Condition for all circumstances**

It is a condition of each exemption granted under this Order that the person to whom the exemption applies must provide (whether or not through an agent), to the Minister or the Essential Services Commission, any information requested by the Minister or the Essential Services Commission, respectively, that either may require for the reasonable administration of this Order.

## **7. Pricing Rule**

The price, or range of prices, at which electricity (and services related to the provision of electricity) may be distributed, supplied and sold to a short term resident, long term resident or small business customer pursuant to an exemption granted under this Order must:

- (a) not be more than the tariff that would apply to the customer if the customer purchased the electricity and related services pursuant to an offer made in accordance with the requirements of section 35 of the Act ; and
- (b) allow for the Special Power Payment rebate to which the customer would be entitled if the customer purchased electricity from a licensed retailer,

in accordance with any guidelines that may be issued by the Essential Services Commission.

## **8. Safety**

A person to whom an exemption under this Order applies is not, by reason of this Order, exempt from any provisions of the Electricity Safety Act 1998 or the Regulations or any other instruments made under that Act.

Dated

2002

Responsible Minister:

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Candy Broad  
**Minister for Energy and Resources**

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**Clerk of the Executive Council**

## SCHEDULE

### PART A – GENERIC SITUATIONS

#### Column 1

#### Column 2

### 1. GENERATION

#### Exempt Persons

Any person

#### Exemption

The generation of electricity for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW.

#### Conditions

This exemption is subject to the conditions that:

- (a) the total exported output of the relevant electricity generator or group of generators must be supplied or sold to a licensed retailer; and
- (b) the exempt person must observe all applicable provisions of the Distribution Code.

#### Limitations

This exemption does not apply to the generation of electricity for supply or sale if the relevant electricity generator or group of generators is required by the National Electricity Code to be centrally dispatched.

## 2. DISTRIBUTION AND SUPPLY OF ELECTRICITY IN EMBEDDED NETWORKS

*Examples of such networks include caravan parks and office buildings.*

### Exempt Persons

Any person

### Exemption

The intermediary distribution or supply of electricity to a short term resident, long term resident, small business customer or large business customer within the limits of the premises owned or occupied by the person engaging in that activity.

### Conditions

This exemption is subject to the condition that the exempt person must observe all applicable provisions of the Distribution Code as if that person was a licensed electricity distributor.

This exemption is subject to the additional condition that in the event of a dispute concerning the distribution or supply of electricity to a short term resident, long term resident or small business customer, and in the absence of any determination of the Victorian Civil and Administrative Tribunal, that the exempt person must:

- (a) make reasonable endeavours to resolve the dispute;
- (b) advise the person to whom electricity is distributed or supplied, of his or her right to apply to have a matter heard by the Victorian Civil and Administrative Tribunal; and
- (c) continue to distribute or supply electricity to that person.

**Limitations**

This exemption does not apply to the intermediary distribution or supply of electricity in respect of any premises where:

- (a) in relation to any existing premises, the supply arrangements are restructured; and
- (b) in relation to any new premises, the supply arrangements are structured,

in such a way as may have the effect of denying:

- (c) a person any rights they may have if the supply arrangements were not so structured or restructured; or
- (d) a licensed retailer the ability to sell electricity to a customer with an approved meter.

The Essential Services Commission may, on application of any person whose interests are affected, issue a certificate stating that in the opinion of the Essential Services Commission the structuring or restructuring of supply arrangements may have an effect specified in the preceding paragraph and, if it does so, then the arrangements have that effect for the purposes of this Order.

### 3. SALE OF METERED ELECTRICITY IN EMBEDDED NETWORKS

#### Exempt Persons

Any person

#### Exemption

The metered intermediary sale of electricity within the limits of the premises owned or occupied by the person engaging in that activity.

#### Conditions

This exemption is subject to the conditions that:

- (a) the exempt person must observe all applicable provisions of the Retail Code as if that person was a licensed retailer;
- (b) in the case of the sale of electricity to a short term resident, long term resident or small business customer, the exempt person must observe all applicable provisions of any Pricing Rule;
- (c) in the case of the sale of electricity to a large business customer or a small business customer, the exempt person must, when it commences selling electricity to the customer, inform the customer in writing that it may have the right to elect to purchase electricity from a licensed retailer of its choice; and
- (d) the exempt person must not, by reason only that the exempt person has changed its licensed retailer, cease to sell electricity to any relevant short term resident, long term resident, small business customer or large business customer unless that customer has elected to purchase electricity from a licensed retailer.



This exemption is subject to the additional condition that in the event of a dispute concerning the sale of electricity to a short term resident, long term resident or small business customer, and in the absence of any determination of the Victorian Civil and Administrative Tribunal, the exempt person must:

- (e) make reasonable endeavours to resolve the dispute, and
- (f) advise the person to whom electricity is sold, of his or her right to apply to have a matter heard by the Victorian Civil and Administrative Tribunal.

#### **4. SALE OF ELECTRICITY BETWEEN RELATED COMPANIES**

##### **Exempt Persons**

Any person

##### **Exemption**

The sale of electricity by the exempt person to a related body corporate of the exempt person.

## 5. SUBDIVISION OF LAND

### Exempt Persons

Any person

### Exemption

The distribution, supply and sale of electricity outside premises owned or occupied by the person engaging in the activity to a large business customer with an approved meter as the direct consequence of a subdivision of a property.

### Conditions

This exemption is subject to the conditions that the exempt person:

- (a) must not engage in the exempt activities other than incidentally to its core business function, which function must not be related to the distribution, supply or sale of electricity;
- (b) must cause an easement to be recorded on the titles of all affected properties in accordance with the Transfer of Land Act before the distribution, supply or sale of electricity occurs;
- (c) must cause the distribution, supply or sale arrangements to be noted on any statements provided under section 32 of the Sale of Land Act relating to all affected properties;
- (d) must observe all applicable provisions of the Distribution Code as if the person was a licensed electricity distributor;
- (e) must not take any action which prevents the large business customer from purchasing electricity from a licensed retailer of its choice;
- (f) must not take any action which prevents a licensed retailer from selling electricity to the large business customer;

- (g) unless otherwise agreed, must provide, at the request of any person who occupied the subdivided property at the time of subdivision, a separate point of supply (as defined in the Electricity Safety Act) from the licensed distribution company at no cost to that person if such a separate point of supply does not already exist; and
- (h) accepts full liability for any claims, losses, damages or costs incurred by any materially affected person as a direct result of any breach by the exempt person of any of these conditions.

### **Limitations**

This exemption ceases to apply where there is any restructuring of the distribution or supply arrangements other than like-for-like replacement in the course of maintenance, or the replacement of an approved meter with another approved meter.

**PART B – SPECIFIC SITUATIONS**

<b>Exempt Persons</b>	<b>Exemption</b>
1. Country Energy	<p data-bbox="879 371 1466 555">The distribution, supply and sale of electricity in the areas of Bonang, Tebbutt, Dedick, Goongerah, Delegate River, Bendoc, Lower Bendoc, Jingellic, Bongilla Island and Tocumwal.</p> <p data-bbox="879 595 1027 627"><b>Conditions</b></p> <p data-bbox="879 633 1433 703">This exemption is subject to the conditions that Country Energy:</p> <ul style="list-style-type: none"> <li data-bbox="879 743 1466 958">(a) must distribute, supply and sell electricity to persons in these areas on the same terms and conditions of any licence it holds that enables it to distribute, supply and sell electricity to customers in New South Wales;</li> <li data-bbox="879 999 1466 1182">(b) agrees, that the Energy and Water Ombudsman of New South Wales has jurisdiction to hear and determine disputes in accordance with its functions;</li> <li data-bbox="879 1223 1466 1438">(c) must not take any action that would affect the ability of a customer to purchase electricity from an electricity retailer licensed in New South Wales to sell electricity to a customer in these areas; and</li> <li data-bbox="879 1478 1466 1653">(d) must not take any action that would affect the ability of an electricity retailer licensed in New South Wales to sell electricity to a customer in these areas.</li> </ul>

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2. ETSA Utilities

The distribution, supply and sale of electricity by ETSA Utilities to another licensed electricity distributor or licensed retailer in Victoria, and existing customers of ETSA Utilities in Victoria as at the date of this Order, subject to the conditions that ETSA Utilities:

- (a) distributes, supplies and sells electricity to persons in these areas on the same terms and conditions of any licence it holds that enables it to distribute, supply and sell electricity to customers in South Australia; and
- (b) provides customers in Victoria with access to the same dispute resolution process it provides to comparable customers in South Australia.

3. Federal Airports Corporation

The distribution, supply and sale of electricity at Melbourne International Airport, Tullamarine.

This exemption is subject to the conditions that Federal Airports Corporation must:

- (a) observe the Pricing Rule;
- (b) observe all applicable provisions of the Distribution Code, the Electricity Customer Metering Code and the Retail Code;
- (c) not take any action which prevents a customer from purchasing electricity from a licensed retailer of the customer's choice; and
- (d) not take any action which prevents a licensed retailer from selling electricity to a customer.

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4. Melbourne Exhibition Centre

The distribution, supply and sale of electricity within the exhibition centre owned and operated by Melbourne Exhibition Centre.

**Conditions**

This exemption is subject to the conditions that:

- (a) Melbourne Exhibition Centre must observe the Pricing Rule;
- (b) Melbourne Exhibition Centre must observe all applicable provisions of the Distribution Code;
- (c) any dispute relating to the distribution, supply or sale of electricity between Melbourne Exhibition Centre and a person to whom it distributes, supplies or sells electricity must, except where both parties otherwise agree, be resolved in accordance with any dispute resolution process that has been agreed between them; and
- (d) Melbourne Exhibition Centre supplies electricity to its exhibitors at cost and does not seek to make a profit on the re-sale of electricity.

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| 5. | HRL Treasury Pty Ltd (ACN 062 076 279) ("HRL") | The distribution, supply and sale of electricity within the limits of the premises owned or occupied as at the date of this Order by HRL or one of its related bodies corporate at Tramway Road, Morwell. |
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**Conditions**

This exemption is subject to the conditions that HRL observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) the Pricing Rule.

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| 6. | <p>Loy Yang B Power Station Pty Limited (ACN 052 530 551)</p> <p>Mission Energy Australia Ltd (ACN 055 563 785) as managing partner of the Latrobe Power Partnership</p> <p>Mission Energy Management Australia Pty Ltd (ACN 055 563 696) as the operator of the Loy Yang B power station and any other person appointed in its place as operator of the Loy Yang B power station by Loy Yang B Power Station Pty Ltd and Mission Energy Australia Ltd as managing partner of the Latrobe Power Partnership</p> | <p>The generation of electricity by the Loy Yang B power station for supply or sale to the State Electricity Commission of Victoria.</p> |
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| 7. Electricity Trust of South Australia ("ETSA") and any person who in accordance with the laws of South Australia succeeds to the entitlements of ETSA | The generation of electricity for supply or sale pursuant to any remaining entitlements under the former Interconnection Operating Agreement dated 14 July 1986. |
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| 8. Electricity Commission of New South Wales ("ECNSW") and any person who in accordance with the laws of New South Wales succeeds to the entitlements of ECNSW under the Snowy Mountains Hydro-electric Agreement or the Hume Power Station Agreement | The generation of electricity for supply or sale to any licensed distributor or licensed retailer in Victoria pursuant to the Snowy Mountains Hydro-electric Agreement or the Hume Power Station Agreement. |
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| 9. Department of Natural Resources and Environment | The generation of electricity for supply or sale, the transmission, distribution, supply or sale of electricity, in each case within Wilson's Promontory National Park in the manner and to the extent such activities are engaged in as at the date of this Order. |
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**Conditions**

This exemption is subject to the conditions that the Department observes:

- (a) all applicable provisions of the Distribution Code; and
  - (b) the Pricing Rule.
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## 10. Alpine Resorts Commission

The generation of electricity for supply or sale, the transmission, distribution, supply or sale of electricity, in each case in the areas of Lake Mountain and Mount Baw Baw in the manner and to the extent that such activities are engaged in as at the date of this Order.

**Conditions**

This exemption is subject to the conditions that the Alpine Resorts Commission observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) Pricing Rule.

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11. Lions Village Licola Incorporated

The generation of electricity for supply or sale, the transmission, distribution, supply or sale of electricity, in each case in respect of Licola Village in the manner and to the extent that such activities are engaged in as at the date of this Order.

**Conditions**

This exemption is subject to the condition that Lions Village Licola Incorporated observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) Pricing Rule.