



**ELECTRICITY SUPPLY INDUSTRY
Interim Agreement (generation operations)**

between the

Electricity Regulator

and

Hydro-Electric Corporation

Interim Agreement ~ (generation operations)

Introduction and background

This *Interim Agreement* between the Hydro-Electric Corporation and the Regulator recognises the desire of the HEC to act in a manner consistent with being an electricity entity as provided for by the *Electricity Supply Industry Act 1995 [ESI Act]*, including complying with any licence obligations.

A fundamental of the regulatory scheme established by the ESI Act is that it makes provision for the Regulator to issue licences to electricity entities to engage in certain operations in the Tasmanian electricity supply industry.

The Regulator is of the view, and the HEC agrees, that it is not appropriate at this time to issue a licence to the HEC. This takes account of a number of factors including:

- there is currently a Review of Generation Structure being undertaken by government; and
- there is also a review of wholesale pricing in the Tasmanian electricity market.

The results of both these reviews are likely to have significant regulatory implications.

Presumptive licence

At present the HEC has a 'presumptive licence' to undertake such operations in the Tasmanian electricity supply industry as it was lawfully undertaking prior to the commencement of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*. The HEC made application for a licence to continue to undertake operations under that Act within the relevant time period.

Such presumptive licence continues until it is finally determined by the Regulator.

Interim Agreement

The *Interim Agreement* reflects in large part the obligations imposed on other electricity entities by their licences. Such variations as there are reflect differences in the nature of the entity, eg a GBE rather than a corporation law company, or statutory provisions in the ESI Act.

The fundamental elements of other licences apply to the HEC:

- the provision of relevant *management plans* to the Regulator;
- compliance with the Tasmanian Electricity Code;
- payment of fees and charges;
- reporting obligations; and
- the provision of such assistance as the Regulator may reasonably require in the development or review of *standards and procedures*.

The approach taken in all licences and this *Interim Agreement* has been 'light handed' in that the Regulator has not sought to intervene in the day-to-day management of the entities. Rather, he seeks to ensure that all stakeholders are provided with sufficient information to properly assess the performance of the entities in meeting their regulatory obligations.

1 Definitions and Interpretation

- 1.1 In this Interim Agreement, words and phrases appearing in italics have the meaning ascribed to them in part 1 of schedule 1.
- 1.2 This Interim Agreement is to be interpreted in accordance with the principles set out in part 2 of schedule 1.

2 Compliance with Laws and Other Requirements

- 2.1 The *Hydro-Electric Corporation* must comply with the *Act*, the *Regulations* and the *Code*.
- 2.2 For the avoidance of doubt, the *statutory licence conditions* are deemed to form part of this Interim Agreement and the *Hydro-Electric Corporation* must comply with the *statutory licence conditions*.

3 Other Interim Agreement Conditions

This Interim Agreement is subject to the conditions set out in schedule 2 and the *Hydro-Electric Corporation* undertakes to comply with the conditions set out in schedule 2.

4 Term of Interim Agreement

- 4.1 Subject to the *Act*, this Interim Agreement takes effect from the date of signing and continues in effect until such time as the *Regulator* issues a licence or licences to the Hydro-Electric Corporation in accordance with the *Act*.
- 4.2 This Interim Agreement may be varied at any time by agreement between the parties.

5 Payment of Fees and Charges

- 5.1 The *Hydro-Electric Corporation* shall pay to the *Regulator* an annual licence fee as advised by the *Regulator*.
- 5.2 The annual licence fee will be determined in accordance with the principles established by the Structure of Participants Fees in accordance with the *Code*.
- 5.3 The annual licence fee is payable in advance on the first day of July, in each year.

6 Communications

- 6.1 A *communication* must be in *writing*.
- 6.2 A *communication* is to be regarded as having been given by the sender and received by the addressee:
- (a) when delivered in person to the addressee;

- (b) 3 *business days* after the date of posting, if the *communication* is posted within Australia;
- (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia; or
- (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee.

SIGNED by the **REGULATOR**)
under the **Electricity Supply**)
Industry Act on ## June, 1999)

SIGNED by the **CHIEF**)
EXECUTIVE OFFICER)
of the **Hydro-Electric Corporation**)
on ## June, 1999)

Schedule 1 - Definitions and Interpretation

1 Definitions

In this Interim Agreement:

(a) words which are defined in the *Act* have the same meaning where used in this Interim Agreement; and

(b) the following words or phrases have the following meanings:

“*Act*” means the *Electricity Supply Industry Act 1995* (Tas);

“*asset management plan*” means a written plan developed by the *Hydro-Electric Corporation* outlining the procedures, practices and strategies for managing and auditing the asset management of the *Hydro-Electric Corporation’s generation operations*,

“*business day*” means a day on which banks are open for general banking business in Hobart, excluding a Saturday or Sunday;

“*Code*” means the Tasmanian Electricity Code issued in accordance with section 49A of the *Act*;

“*communication*” means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this Interim Agreement;

“*compliance plan*” means a written plan developed by the *Hydro-Electric Corporation* outlining the procedures, practices and strategies for managing and auditing the *Hydro-Electric Corporation’s* compliance with the *Act*, the *Regulations*, the *Code* and this Interim Agreement which must include (amongst other things) details of standards, indicators and targets for measuring the *Hydro-Electric Corporation’s* compliance performance and must be in accordance with AS3806 compliance program;

“*generation operations*” means all those operations which the Hydro-Electric Corporation may undertake pursuant to the deemed licence provided for by section 4 of the *Electricity Industry Restructuring (Savings and Transitional Provisions) Act 1995*.

“*guidelines*” means a written statement of regulatory intent or policy issued by the *Regulator* for information and guidance of electricity supply industry participants;

“*Hydro-Electric Corporation*” means the Hydro-Electric Corporation ARBN 072 377 158;

“*management plan*” means a *compliance plan*, *asset management plan* or *service plan*;

“*Regulations*” means any regulations made pursuant to the *Act*;

“*reporter*” means an appropriately qualified person engaged by the *Hydro-Electric Corporation* with the approval of the *Regulator* to report to the

Regulator on compliance with and adequacy of **management plans** in accordance with terms of reference approved by the **Regulator**;

“service plan” means a written plan developed by the **Hydro-Electric Corporation** outlining the procedures, practices and strategies for managing and auditing the reliability and performance of the **Hydro-Electric Corporation’s generation operations**;

“standards and procedures” means overall performance standards or codes of conduct which are issued by the **Hydro-Electric Corporation** under clause 4.1 or by the **Regulator** under clause 4.3;

“statutory licence conditions” means the licence conditions provided for by section 22 of the **Act**;

“writing” includes any mode of representing or reproducing words, figures, drawings and symbols in a visible form.

2 Interpretation

In this Interim Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Interim Agreement;
- (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, schedule or part is to a condition, clause, schedule or part of this Interim Agreement;
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- (g) a reference to any statute, regulation, 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;
- (h) 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;
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this Interim Agreement have a corresponding meaning;
- (k) 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
- (1) an event which is required under this Interim Agreement to occur on or by a stipulated day which is not a ***business day*** may occur on or by the next ***business day***.

Schedule 2 - Other Interim Agreement conditions

1 Provision of Information

- 1.1 The *Hydro-Electric Corporation* must provide to the *Regulator*, in the manner and form decided by the *Regulator*, such information as the *Regulator* may from time to time require and which is, in the reasonable opinion of the *Regulator*, relevant to the *Regulator's* functions under the *Act*.
- 1.2 If the *Hydro-Electric Corporation* becomes aware of any material breach of the *Act*, the *Regulations*, the *Code* or this Interim Agreement by the *Hydro-Electric Corporation*, the *Hydro-Electric Corporation* must notify the *Regulator* as soon as practicable of the breach and provide such information as the *Regulator* requires in relation to the breach.
- 1.3 The *Regulator* must preserve the confidentiality of any information provided by the *Hydro-Electric Corporation* under this Interim Agreement in accordance with the provisions of the *Act* and the *Code*.

2 Prudential Reporting

- 2.1 The *Hydro-Electric Corporation* must advise the *Regulator* as soon as possible of any financial circumstance which may affect the *Hydro-Electric Corporation's* ability to meet its obligations under the *Act*, the *Regulations*, the *Code* or this Interim Agreement.
- 2.2 The *Hydro-Electric Corporation* must submit to the *Regulator* not later than 30 November of each year audited financial statements of the *Hydro-Electric Corporation's* operations in the electricity supply industry in Tasmania.

3 Management Plans and Reports

- 3.1 The *Hydro-Electric Corporation* must develop and submit to the *Regulator*:
 - (a) a *compliance plan*;
 - (b) an *asset management plan*; and
 - (c) a *service plan*;initially on or before 1 June 1999 or such other date as may be agreed with the *Regulator*, subsequently by the first anniversary of that date, and thereafter every two years.
- 3.2 The *management plans* are to be made in accordance with and take account of any *guidelines*.
- 3.3 The *Hydro-Electric Corporation* must undertake community consultation on aspects of *management plans* that may affect the public.
- 3.4 The *Hydro-Electric Corporation* must consider any comments made by the *Regulator* on the *management plans* and, if required by the *Regulator*, amend

provisions of a *management plan* related to reporting to the *Regulator* including processes for capturing and analysing data that is to be reported.

- 3.5 Each year by no later than 30 September, the *Hydro-Electric Corporation* must provide a report to the *Regulator* that includes:
- (a) details of the *Hydro-Electric Corporation's* actual performance against the standards, indicators and targets included in the *management plans*;
 - (b) if the *Hydro-Electric Corporation's* actual performance is below the targets included in a *management plan*, the reasons for the failure to meet the targets and strategies for achieving the targets in the future;
 - (c) projections of the *Hydro-Electric Corporation's* future performance against the standards, indicators and targets included in the *management plans*;
 - (d) a description of the strategies adopted or to be adopted by the *Hydro-Electric Corporation* to achieve or exceed the performance targets included in the *management plans*; and
- 3.6 For the avoidance of doubt, the requirement under clause 3.5 of this schedule 2 to prepare a report containing the information listed in paragraphs (a) to (e), does not limit the *Regulator's* powers under clause 1.1 of this schedule 2, the *Act* or the *regulations* to require the *Hydro-Electric Corporation* to produce information.
- 3.7 Reports prepared in accordance with clause 3.5 of this schedule 2 are to be submitted to the *Regulator*, accompanied by a report prepared by a *reporter*.

4 Standards and Procedures

- 4.1 At the written request of the *Regulator*, the *Hydro-Electric Corporation* must participate to the extent specified by the *Regulator* in the development, issues and review of any *standards and procedures* specified by the *Regulator* which are, in the reasonable opinion of the *Regulator*, relevant to the *Regulator's* functions under the *Act*.
- 4.2 The *Hydro-Electric Corporation* must in accordance with directions of the *Regulator*, report to the *Regulator* on its performance against applicable *standards and procedures*.
- 4.3 If the *Regulator* considers that:
- (a) the *Hydro-Electric Corporation* has failed to comply with clause 4.1; or
 - (b) *standards and procedures* applicable to the *Hydro-Electric Corporation* have been shown to be insufficient to prevent abuses by the *Hydro-Electric Corporation* of any monopoly power it enjoys,
- the *Regulator* may issue *standards and procedures* applicable to the *Hydro-Electric Corporation* and with which the *Hydro-Electric Corporation* must use best endeavours to comply.