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Review of the Electricity Licensing Regime Draft Decision

Electricity Licensing Regime Draft Decision

EDL welcomes the opportunity to make a submission on the Review of the Northern Territory's Electricity Licensing Regime Draft Decision – scope and design (Draft Decision).

EDL notes that, among other things, the first stage of the review focusses on reassessing the suitability of legacy licensing arrangements, and whether the exemptions framework appropriately balances the administrative and financial costs of licensing for licensees, the Commission and government with the benefits to consumers and industry.

Licensing Coverage and Purpose

Under the Draft Decision, while legacy licensing arrangements will remain in place, the Commission proposes any person establishing new electricity operations will be required to hold all relevant licences (or obtain an exemption from the requirement to hold a licence) and those licences will include a standard set of conditions unless the person can demonstrate that those conditions are not appropriate for their electricity operations.

Specifically, the Commission proposes to only issue a generation licence, that is, no new independent power producer (IPP) licences will be issued.

Guiding Principles for Assessing Exemptions

EDL notes that the Commission has made clear its proposed principles to guide its decision-making on when an exemption may be appropriate for a person applying to operate in the Territory's electricity supply industry.

DMIRS Decision

Western Australia already has a class-based licence exemption for a person that constructs or operates generating works:

- with a capacity size of less than 100 MW at a connection point (100 MW Threshold),
- regardless of size, that supply another person on the same non-residential property, and
- specific exemptions for certain persons that operate generating works with a capacity size above 100 MW.



Western Australia's Department of Mines, Industry Regulation and Safety (DMIRS) performed a review to consider "whether the threshold [of 30 MW] in the existing generation licensing exemption should be increased as an interim measure to reduce red tape for the industry, prior to the anticipated submission of a package of energy legislation amendments to Parliament".

DMIRS issued its decision paper in October 2022. Based on "good evidence that the costs of generation licensing outweigh the benefits", the decision made was to increase the 30 MW threshold to 100 MW. Achieving "a net benefit" and "not contrary to the public interest", the 100 MW Threshold captures approximately half of existing licensed renewable generators in Western Australia, while capturing around one-third of thermal generators.

It is noteworthy that this is an interim measure prior to Parliament's anticipated consideration of the removal of the requirement for generators to be licensed, being a decision already made by other international jurisdictions. The *Licensing and Other Authorisations Amendment Bill 2016* states that "there are sufficient regulatory and contractual arrangements in place to manage the operation of generating electricity without the need to licence generators ... this amendment will remove unnecessary compliance costs and administrative burden associated with current generator licences."

EDL Response

The Commission has:

- 1) recognised that the cost of licensing through fees and resources associated with achieving and maintaining compliance with licence conditions can be disproportionate relative to the potential risks to customers and/or the operation of the power system,
- 2) noted that exemptions are a means of lessening the cost of regulation and achieving desired outcomes such as facilitating entry to markets and allowing consumers to benefit from competition and efficiency (through more choice or lower cost providers), and
- 3) developed a set of principles to guide exemption decisions.

EDL is supportive of structures that achieve a balance between the costs and benefits stated in point 2. It is EDL's view that the proposal to 'replace' (IPP) licences with (1) generation licences, and (2) the potential for certain exemptions to be granted against some licence conditions, does not appropriately balance these costs and benefits.

While the proposed principles referred to in point 3 appear at face value to be supportive of good decision-making, they do not provide confidence to applicants that a particular outcome is likely for a particular set of inputs or assumptions. There is no clear and structured way of having certainty of success, which constrains the Commission's desired outcomes such as facilitating entry to markets and allowing consumers to benefit from competition and efficiency.

In an apparent contradiction to providing a cost-benefit balance, the Commission's second published principle ("an exemption will only be granted where the applicant can demonstrate that the costs of licensing outweigh the benefits associated with licensing...") may cause an applicant unreasonable cost, with an applicant attempting to demonstrate costs versus benefits against an undefined standard.

By contrast, the IPP licence is a current mechanism that provides a more reasonable cost-benefit balance. Further, as demonstrated by DMIR's decision and the *Licensing and Other Authorisations Amendment Bill 2016*, it is arguable that the current IPP licence conditions are



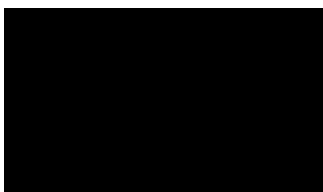
unbalanced towards cost, noting that Western Australian energy market is bigger, more complicated, and with more non-grid connected operations than the Northern Territory.

EDL's Jabiru Power Station is subject to a generation licence to provide electricity under a PPA to PWC and is connected to a network where the end user(s) of the electricity are public consumers. Being the single generator on the network (excepting community solar), EDL understands that a generation licence may provide some comfort to the Commission that those consumers will experience a high level of quality and reliability, even though such requirements are adequately covered by the PPA and EDL considers that an IPP licence in that instance would exceed a reasonable cost-benefit balance.

However, EDL is not understanding of any benefit of requiring a generation licence to provide electricity in circumstances like EDL's McArthur River Mining (MRM) Power Station. As previously submitted by EDL in its response to the Commission's Issues Paper of 2022, where there is a single generator providing electricity, risks such as power system integrity, quality, reliability, and cost are managed under a PPA and typically tailored to the specific needs of the customer with mechanisms in place to incentivise good performance. In circumstances like EDL's MRM Power Station, the PPA is between 2 sophisticated organisations with no public consumers. A generation licence would be more burdensome for both the Commission and licensees and ultimately of no value to the Commission as such electricity arrangements do not impact the general public.

EDL considers that, in the absence of a clear exemption framework that demonstrates the maintenance or improvement of the cost-benefit balance, the issuing of new IPP licences (under conditions currently in place) is necessary to meet the Commission's objectives, and that the Draft Decision does not yet address the issue of licence conditions being disproportionate relative to the potential risks to customers and/or the operation of the power system.

Yours sincerely



EDL