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**SPECIAL**

## ELECTRICITY INDUSTRY ACT 1993

### AMENDMENT OF ENERGY LEVY ORDER

#### ORDER IN COUNCIL

The Governor in Council acting under section 158C(ba)(i) of the **Electricity Industry Act 1993**, hereby makes the following Order:

Dated 25 June 1996

Responsible Minister:

ALAN R. STOCKDALE

Treasurer

Department of Treasury and Finance

ANNETTE WILTSHIRE  
Acting Clerk of Executive Council

1 **GENERAL**

1.1 **Authorising provisions**

This Order is made under section 158C(ba)(i) of the Electricity Industry Act 1993.

1.2 **Purpose**

The purpose of this Order is to amend an Order made by the Governor in Council under section 158B of the Electricity Industry Act 1993 and dated 20 June 1995 (called the "Energy Levy Order").

1.3 **Commencement**

This Order takes effect at the same time as the Energy Levy Order.

2 **AMENDMENTS TO CLAUSE 2**

Clause 2 of the Energy Levy Order is amended by inserting the following words after "by SECV for the sale of that electricity" and again after "the amount SECV is entitled to receive under the Pool Rules":

"over the term of the Power Supply Agreement (as defined in the Act)".

3 **AMENDMENTS TO CLAUSE 3**

Clause 3.3 of the Energy Levy Order is amended by:

- (a) deleting the words "made in accordance with the licence issued to Victorian Power Exchange under Part 12 of the Act"; and
- (b) inserting the following words after "the modifications to the Pool Rules made by this Order":

"(other than those made to rule 180)".

4 **AMENDMENTS TO THE SCHEDULE**

Replace the schedule to the Energy Levy Order with the attachment to this Order.

ATTACHMENT TO ORDER UNDER SECTION 158C(ba)(i) OF THE ELECTRICITY  
INDUSTRY ACT

"SCHEDULE TO ORDER UNDER SECTION 158B  
OF THE ELECTRICITY INDUSTRY ACT

To give effect to the Order, the VicPool Rules are amended in the manner set out below with effect on and from 1 July 1995.

1. Rule 10.1 - Definitions

Rule 10.1 is to be amended by inserting in alphabetical order the following definitions in rule 10.1:

"Energy Table" means the table setting out the estimated franchise customer load of each Pool Customer for each Payment Period (or part Payment Period) between 1 July 1995 and 31 December 2000 and signed for the purposes of identification by the Treasurer on or about 18 June 1996.

"Financial Year" means a year ending on 30 June.

"Index Number" in respect of a Quarter means the Consumer Price Index: All Groups Index Number Melbourne published by the Australian Bureau of Statistics in respect of the Quarter.

"Interconnection Operating Agreement Trader" means State Electricity Commission of Victoria in its capacity as Interconnection Operating Agreement Trader.

"LYB Uplift Payment" means the payment, expressed in \$, determined under rule 160.2(c) for a Payment Period for a Pool Customer.

"LYB Uplift Payment (1)" means the component of the LYB Uplift Payment for a Payment Period as determined under rule 160.3.

"LYB Uplift Payment (2)" means the component of the LYB Uplift Payment for a Payment Period as determined under rule 160.4.

"LYB Uplift Payment Rate (1)" means the amount, expressed in \$/MWh, determined under rule 160.3(d).

"LYB Uplift Payment Rate (2)" means the amount, expressed in \$/MWh, determined under rules 160.4(c), (ca), (cb), and (d).

"Loy Yang B Power Station" has the meaning given to "power station" in the Loy Yang B Act 1992.

"Loy Yang B Power Supply Agreement" means the Power Supply Agreement referred to in the Agreement set out in Schedule 1 of the Loy Yang B Act 1992.

"Loy Yang B Trader" means State Electricity Commission of Victoria in its capacity as Loy Yang B Trader.

"Loy Yang B Trading Loss" means, in respect of a Financial Year, the amount expressed in \$, determined in accordance with rule 160.8 for that Financial Year.

"Quarter" means the respective 3 monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the Consumer Price Index: All Groups Index Number Melbourne.

"Snowy Trader" means State Electricity Commission of Victoria in its capacity as Snowy Trader.

"Tabulated Energy" means the amount of energy, expressed in MWh, for a Pool Customer for a Payment Period (or part Payment Period) either:

- (1) specified in the Energy Table for that Pool Customer in respect of that Payment Period (or part Payment Period); or
- (2) if not specified in the Energy Table for that Pool Customer in respect of that Payment Period (or part Payment Period), then determined pursuant to rule 160.3(b),

or, if VPX has exercised its power under rule 160.3(c) in respect of that Payment Period (or part Payment Period), then determined by VPX under that rule.

"Treasurer" means the Treasurer of the State of Victoria."

## 2. Rule 50 - Participants

Rules 50.5 and 50.6 are to be amended so that they read as follows:

### "50.5 Date of Cessation

The person will cease to be a Participant when all payments due to be paid by it or to it under these rules have been made, including, in the case of a person who was a Pool Customer, any LYB Uplift Payment amounts which are or become payable by it under rule 160.

### 50.6 Effect of Cessation

A Participant which is subject to a liability under these rules (including, in the case of a person who was a Pool Customer, any LYB Uplift Payment amounts which are or become payable by it under rule 160), remains subject to that liability after and despite ceasing to be a Participant regardless of when the claim is made."

## 3. Rule 160 - Determination of Pool Customer charges

Rule 160 is to be amended by:

- 3.1 inserting the heading "160.1 Pool Customer Electricity Charges" immediately after the heading "160 Determination of Pool Customer charges"; and
- 3.2 inserting the following new rules at the end of rule 160 as rules 160.2 to 160.8:

**"160.2 LYB Uplift Payment**

- (a) Subject to rule 160.2(d), each Pool Customer is liable to pay to VPX the LYB Uplift Payment in respect of electricity received and (in the case of a Pool Customer having Tabulated Energy) estimated to be received by it in a Financial Year.
- (b) The LYB Uplift Payment shall cease to be payable as from the commencement of the Financial Year immediately following the Financial Year in which Loy Yang B Trader permanently or indefinitely ceases to supply electricity.
- (ba) Rule 160.2(b) does not affect a Pool Customer's obligation to pay an LYB Uplift Payment in respect of any Payment Period (or part thereof) which occurs prior to the end of the Financial Year in which Loy Yang B Trader permanently or indefinitely ceases to supply electricity.
- (c) The LYB Uplift Payment payable by a Pool Customer in respect of a Payment Period is calculated by applying the following formula:

$$UP(1) + UP(2)$$

where:

UP(1) is LYB Uplift Payment (1) in respect of the Pool Customer for the Payment Period; and

UP(2) is LYB Uplift Payment (2) in respect of the Pool Customer for the Payment Period.

- (d) Neither Snowy Trader nor Interconnection Operating Agreement Trader is liable to pay LYB Uplift Payments nor are amounts for LYB Uplift Payment (1) and LYB Uplift Payment (2) to be calculated for them.
- (e) Subject to rule 160.2(f), Loy Yang B Trader will be entitled to be paid all LYB Uplift Payment amounts received by VPX pursuant to this rule 160.2.
- (f) If, during the Financial Year ending 30 June 1996, the LYB Uplift Payment for a Pool Customer for a Payment Period calculated under rule 160.2(c) for a Payment Period is a negative value:
  - (1) Loy Yang B Trader will pay that amount to VPX; and
  - (2) VPX will, subject to rule 160.2(g), pay that amount to the Pool Customer,

in accordance with rule 180. VPX may, at its own discretion, off-set any such amounts against either any payments to be paid by the Pool Customer under these rules or against any amounts to be paid to Loy Yang B Trader under these rules (as the case may be).

- (g) If Loy Yang B Trader fails to pay to VPX any amount owing pursuant to rule 160.2(f), then the short-fall will be borne by all Pool Customers in proportion to the LYB Uplift Payments payable by Pool Customers in the relevant period. For this purpose, Pool Customers will be either required to accept a lesser amount from VPX under rule 160.2(f) or pay an additional amount to VPX under rule 160.2(c) (in which case the shortfall will be treated as if it were an additional part of the Loy Yang B Trading Loss for the previous Financial Year) (as the case may be).
- (h) In collecting the LYB Uplift Payment from a Pool Customer, VPX will be acting as the agent of Loy Yang B Trader and not as a principal and is not liable for any loss, damage or expense suffered or incurred by a Pool Customer or Loy Yang B Trader as a consequence of any act or omission by VPX pursuant to either of rules 160 or 180.

#### 160.3 LYB Uplift Payment (1)

- (a) The LYB Uplift Payment (1) for a Pool Customer in respect of a Payment Period is calculated by applying the following formula:

$$\text{UPR}(1) \times \text{TE}$$

where:

UPR(1) is the LYB Uplift Payment Rate (1); and

TE is the Tabulated Energy for the Pool Customer for the Payment Period.

- (b) Subject to rule 160.3(c), if no amount of energy is specified in the Energy Table for a Pool Customer in respect of a Payment Period or part Payment Period, then the Tabulated Energy for that Pool Customer for that Payment Period or part Payment Period is equal to zero.
- (c) If the allocation of Tabulated Energy amongst Pool Customers specified in the Energy Table in respect of a Payment Period or part Payment Period is not, in VPX's reasonable opinion, reasonable, having regard to the principles upon which the Energy Table was prepared, then VPX may in its sole and reasonable discretion, reallocate the specified amounts for Tabulated Energy amongst Pool Customers in respect of that Payment Period or part Payment Period. For this purpose, upon request by VPX, Pool Customers must provide VPX with such information as VPX requests concerning their franchise customer load as soon as is reasonably practicable after the request by VPX is made.
- (d) LYB Uplift Payment Rate (1) is \$2/MWh or, if the Treasurer in exercising his or her powers under an Order made under section 158B of the EI Act specifies:
  - (1) another amount for the purpose of this rule, then that amount; or
  - (2) a method of determining an amount for the purpose of this rule, then the amount determined by the application of that method.

**160.4 LYB Uplift Payment (2)**

- (a) Subject to rule 160.4(b), the LYB Uplift Payment (2) for a Pool Customer in respect of a Payment Period is calculated by applying the following formula:

$$\text{UPR}(2) \times (\text{PCSD} - \text{TE})$$

where:

UPR(2) is LYB Uplift Payment Rate (2) for the Financial Year in which the Payment Period falls;

PCSD is the sum of the Pool Customer Settlement Demands for the Pool Customer for all of the Settlement Periods which fall in the Payment Period; and

TE is the Tabulated Energy for the Pool Customer for the Payment Period.

- (b) If a Payment Period falls in part in one Financial Year and in part in another Financial Year, then the LYB Uplift Payment (2) for a Pool Customer in respect of the Payment Period is the sum of the amounts, where an amount is calculated in respect of each part of the Payment Period by applying the formula in rule 160.4(a), but as if references to "the Payment Period" in the definitions of UPR(2), PCSD and TE in rule 160.4(a) read "the relevant part of the Payment Period".
- (c) Subject to rule 160.4(d), the LYB Uplift Payment Rate (2) for a Financial Year (called the "Applicable FY") is the lesser of the following amounts:
- (1) the amount (in \$/MWh) determined by VPX for the Applicable FY using the following formula:

$$\text{ALR}(1) \times \frac{\text{NCPI}}{\text{OCPI}}$$

where:

ALR(1) is \$2/MWh;

NCPI is the Index Number for the Quarter ending on 31 March immediately preceding the Applicable FY; and

OCPI is the Index Number for the Quarter ending on 31 March 1995,

or, if the Treasurer in exercising his or her powers under an Order made under section 158B of the EI Act, specifies:

- (i) another amount for the purpose of this rule, then that amount; or

- (ii) a method for determining an amount for the purpose of this rule, then the amount determined by the application of that method; and
- (2) the amount (in \$/MWh) determined by VPX for the Applicable FY using the following formula:

$$\text{UPRE}(2)_i + \frac{K_i}{\text{FPCSD}_i - \text{STE}_i}$$

where:

UPRE(2)<sub>i</sub> is determined in accordance with the following formula:

$$\frac{(0.51 \times \text{LYL}_{i-1}) - (\text{STE}_i \times \text{UPR}(1)_i)}{\text{FPCSD}_i - \text{STE}_i}$$

LYL<sub>i-1</sub> (in \$) is Loy Yang B Trader's latest estimate of the Loy Yang B Trading Loss (if any) for the Financial Year immediately preceding the Applicable FY provided under rule 160.8(c) or, if that amount is negative, then zero; and

STE<sub>i</sub> (in MWh) is the sum of the Tabulated Energy for all Pool Customers for all Payment Periods (and part Payment Periods) which fall in the Applicable FY; and

UPR(1)<sub>i</sub> (in \$/MWh) is LYB Uplift Payment Rate (1) for the Applicable FY; and

FPCSD<sub>i</sub> (in MWh) is VPX's forecast of the sum of the Pool Customer Settlement Demands for all Pool Customers (excluding Snowy Trader and Interconnection Operating Agreement Trader) for all Settlement Periods which fall in the Applicable FY, taking into account the estimates provided under rule 160.7(a) in respect of the Applicable FY; and

K<sub>i</sub> (in \$) is the hindsight correction factor and is calculated using the following formula:

$$K_i = \text{KA}_i \times \left(1 + \frac{\text{Int}_i}{100}\right) + \text{KB}_i \times \left(1 + \frac{\text{Int}_i}{100}\right) \times \left(1 + \frac{\text{Int}_{i-1}}{100}\right)$$

where:

KA<sub>i</sub> (in \$) is determined in accordance with rule 160.4(ca); and

KB<sub>i</sub> (in \$) is determined in accordance with rule 160.4(cb); and



$Int_i$  is the End of Day Australian Financial Markets Association (AFMA) 1 Year Swap Reference Rate (expressed as a percentage rate per annum) as published in Telerate Page 45401 (or its equivalent) for the last Business Day in December during the Financial Year immediately preceding the Applicable FY; and

$Int_{i-1}$  is the End of Day Australian Financial Markets Association (AFMA) 1 Year Swap Reference Rate (expressed as a percentage rate per annum) as published in Telerate Page 45401 (or its equivalent) for the last Business Day in the December immediately preceding the December referred to in the definition of  $Int_i$ .

(ca)  $KA_i$  is the hindsight correction factor relating to the Financial Year immediately preceding the Applicable FY (called " $FY_{i-1}$ ") and:

- (1) if the Applicable FY is the Financial Year ending 30 June 1996 or the Financial Year ending 30 June 1997, then  $KA_i$  is zero; and
- (2) if the Applicable FY is a Financial Year after the Financial Year ending 30 June 1997, then  $KA_i$  is calculated using the following formula:

$$KA_i = (HCR_{i-1} \times (EPCSD_{i-1} - STE_{i-1})) - (UPRE(2)_{i-1} \times (EPCSD_{i-1} - STE_{i-1}))$$

where:

$EPCSD_{i-1}$  (in MWh) is VPX's estimate of the sum of the Pool Customer Settlement Demands for all Pool Customers (excluding Snowy Trader and Interconnection Operating Agreement Trader) for all Settlement Periods which fall in  $FY_{i-1}$ , taking into account the Pool Customers' actual Pool Customer Settlement Demands for the Settlement Periods in that Financial Year that have already occurred at the time the calculation is made (if known); and

$STE_{i-1}$  (in MWh) is the sum of the Tabulated Energy for all Pool Customers for all Payment Periods (and part Payment Periods) which fall in  $FY_{i-1}$ ; and

$UPRE(2)_{i-1}$  (in \$/MWh) is:

- (i) if  $FY_{i-1}$  is the Financial Year ending 30 June 1997, then zero; and
- (ii) if  $FY_{i-1}$  is a Financial Year after the Financial Year ending 30 June 1997, then the amount determined applying the formula for  $UPRE(2)_i$  set out in rule 160.4(c)(2) when calculating the Loy

Yang B Uplift Rate (2) for  $FY_{i+1}$ , provided that if the application of that formula resulted in:

- (A) a numerator which is not a positive amount or a denominator which is not a positive amount or a denominator which is zero, then  $UPRE(2)_{i+1}$  is \$0/MWh; or
- (B) an amount which is more than the amount (called the "applicable value") determined by applying rule 160.4(c)(1), but as if references to "Applicable FY" in that rule read " $FY_{i+1}$ ", then  $UPRE(2)_{i+1}$  is equal to the applicable value; and

$HCR_{i+1}$  (in \$/MWh) is determined using the following formula:

$$\frac{(0.51 \times LYL_{i+2}) - (STE_{i+1} \times UPR(1)_{i+1})}{EPCSD_{i+1} - STE_{i+1}}$$

where:

$LYL_{i+2}$  (in \$) is the actual Loy Yang B Trading Loss (if any) for the Financial Year immediately preceding  $FY_{i+1}$  or, if that amount is less than zero, then zero; and

$UPR(1)_{i+1}$  (in \$/MWh) is the LYB Uplift Payment Rate (1) for  $FY_{i+1}$ ; and

$EPCSD_{i+1}$  and  $STE_{i+1}$  have the meanings given above,

provided that if the application of this formula results in:

- (iii) a numerator which is not a positive amount or a denominator which is not a positive amount or a denominator which is zero, then  $HCR_{i+1}$  is \$0/MWh; or
  - (iv) an amount which is more than the amount (called the "relevant value") determined by applying rule 160.4(c)(1), but as if references to "Applicable FY" in that rule read " $FY_{i+1}$ ", then  $HCR_{i+1}$  is equal to the relevant value.
- (cb)  $KB_i$  is the hindsight correction factor relating to the Financial Year immediately preceding  $FY_{i+1}$  (called " $FY_{i+2}$ ") and:
- (1) if the Applicable FY is one of the Financial Years ending 30 June 1996, 30 June 1997 or 30 June 1998, then  $KB_i$  is zero; and

- (2) if the Applicable FY is a Financial Year after the Financial Year ending 30 June 1998, then  $KB_i$  is calculated using the following formula:

$$KB_i = (HCR_{i-2} \times (SPCSD_{i-2} - STE_{i-2})) - (UPRE(2)_{i-2} \times (SPCSD_{i-2} - STE_{i-2})) - KA_{i-1}$$

where:

$SPCSD_{i-2}$  (in MWh) is the sum of the Pool Customer Settlement Demands for all Pool Customers (excluding Snowy Trader and Interconnection Operating Agreement Trader) for all Settlement Periods which fall in  $FY_{i-2}$ ; and

$STE_{i-2}$  (in MWh) is the sum of the Tabulated Energy for all Pool Customers for all Payment Periods (and part Payment Periods) which fall in  $FY_{i-2}$ ; and

$UPRE(2)_{i-2}$  (in \$/MWh) is:

- (i) if  $FY_{i-2}$  is the Financial Year ending 30 June 1997, then zero; and
- (ii) if  $FY_{i-2}$  is a Financial Year after the Financial Year ending 30 June 1997, then the amount determined applying the formula for  $UPRE(2)_i$  set out in rule 160.4(c)(2) when calculating the Loy Yang B Uplift Rate (2) for  $FY_{i-2}$ , provided that if the application of that formula resulted in:
  - (A) a numerator which is not a positive amount or a denominator which is not a positive amount or a denominator which is zero, then  $UPRE(2)_{i-2}$  is \$0/MWh; or
  - (B) an amount which is more than the amount (called the "applicable figure") determined by applying rule 160.4(c)(1), but as if references to "Applicable FY" in that rule read " $FY_{i-2}$ ", then  $UPRE(2)_{i-2}$  is equal to the applicable figure; and

$KA_{i-1}$  is the hindsight correction factor determined under rule 160.4(ca) when calculating the Loy Yang B Uplift Payment Rate (2) for  $FY_{i-1}$ ; and

$HCR_{i-2}$  (in \$/MWh) is determined using the following formula:

$$\frac{(0.51 \times LYL_{i-3}) - (STE_{i-2} \times UPR(1)_{i-2})}{SPCSD_{i-2} - STE_{i-2}}$$

where:

LYL<sub>i-3</sub> (in \$) is the actual Loy Yang B Trading Loss for the Financial Year immediately preceding FY<sub>i-2</sub> or, if that amount is less than zero, then zero; and

UPR(1)<sub>i-2</sub> (in \$) is the LYB Uplift Payment Rate (1) for FY<sub>i-2</sub>;

SPCSD<sub>i-2</sub> and STE<sub>i-2</sub> have the meanings given above,

provided that if the application of this formula results in:

- (iii) a numerator which is not a positive amount or a denominator which is not a positive amount or a denominator which is zero, then HCR<sub>i-2</sub> is \$0/MWh; or
- (iv) an amount which is more than the amount (called the "relevant figure") determined by applying rule 160.4(c)(1), but as if references to "Applicable FY" in that rule read "FY<sub>i-2</sub>", then HCR<sub>i-2</sub> is equal to the relevant figure.

- (d) (1) The LYB Uplift Payment Rate (2) for the Financial Year ending 30 June 1996 is -\$2/MWh.
- (2) The LYB Uplift Payment Rate (2) for the Financial Year ending 30 June 1997 is \$0/MWh.
- (3) If:
  - (A) the amount determined under rule 160.4(c) for a Financial Year after the Financial Year ending 30 June 1997 is less than \$0/MWh; or
  - (B) the application of the formula for UPR(2)<sub>i</sub> set out in rule 160.4(c)(2) for a Financial Year after the Financial Year ending 30 June 1997 results in a denominator which is zero or negative,

then the LYB Uplift Payment Rate (2) for that Financial Year will be \$0/MWh.

- (e) For the purposes of rules 160.4(b), 160.4(c), 160.4(ca) and 160.4(cb), the Tabulated Energy for a part of Payment Period is determined by applying the following formula:

$$TE \times \frac{SP(1)}{SP}$$

where:

TE is the Tabulated Energy for the Pool Customer for the Payment Period;

SP(1) is the number of Settlement Periods in the Payment Period which occur in the relevant part of the Payment Period; and

SP is the total number of Settlement Periods in the Payment Period.

This rule 160.4(e) does not apply in the case of the Payment Period ending on 1 July 1995 and the Tabulated Energy for the part of that Payment Period that falls in the Financial Year ending 30 June 1996 for each Pool Customer is the amount set out in the Energy Table in respect of that part and that Pool Customer.

160.5 Not used

160.6 Not used

#### 160.7 Review of estimated Pool Customer Settlement Demand

- (a) On or before 31 March in each Financial Year after the Financial Year ending 30 June 1996, each Pool Customer (excluding Snowy Trader and Interconnection Operating Agreement Trader) must provide to VPX the Pool Customer's estimate of its likely aggregate Pool Customer Settlement Demand for each calendar month during the immediately following 3 Financial Years.
- (b) An estimate under rule 160.7(a) must be made in good faith and using all relevant information in the possession of the Pool Customer making the estimate or which that Pool Customer could have obtained after making reasonable enquiries.

#### 160.8 Calculation of Loy Yang B Trading Loss

- (a) Subject to rule 160.8(b), the Loy Yang B Trading Loss for a Financial Year is the amount determined by Loy Yang B Trader by applying the formula:

$$AP - AR$$

where:

- AP is the aggregate amount paid or payable by Loy Yang B Trader under the Loy Yang B Power Supply Agreement for or in respect of or in any way related to electricity generated by, or the capacity to deliver electricity generated by, the Loy Yang B Power Station, and under any hedge contracts to which it is a party, in the Financial Year; and
- AR is the aggregate amount received or receivable by Loy Yang B Trader for or in respect of electricity supplied by it and under any hedge contracts to which it is a party (but excluding any payments it receives pursuant to rule 160.2 or under the deed entitled "Tariffs and Charges Deed" dated 3 October 1994 between, among others, State Electricity Commission of Victoria and certain Pool Customers) in the Financial Year.

- (b) If the Loy Yang B Trading Loss determined by Loy Yang B Trader under rule 160.8(a) for a Financial Year is a negative amount, then the Loy Yang B Trading Loss for that Financial Year will be deemed to be zero.
- (c) On or before 15 May in each Financial Year after the Financial Year ending 30 June 1996, Loy Yang B Trader must advise VPX in writing of its estimate of the Loy Yang B Trading Loss for that Financial Year and each of the 2 Financial Years immediately following that Financial Year. An estimate under this rule must be made in good faith and using all relevant information in the possession of Loy Yang B Trader or which Loy Yang B Trader could have obtained after making reasonable enquiries.
- (d) As soon as is reasonably practicable but in any event within 90 days after the end of each Financial Year, Loy Yang B Trader must advise VPX in writing of the actual Loy Yang B Trading Loss for the relevant Financial Year.
- (e) If Loy Yang B Trader does not advise VPX of the Loy Yang B Trading Loss for a Financial Year or its estimate of the Loy Yang B Trading Loss for a Financial Year as required pursuant to rules 160.8(c) and 160.8(d), then VPX must not calculate or collect LYB Uplift Payments due during the following Financial Year unless and until Loy Yang B Trader notifies VPX of the Loy Yang B Trading Loss for that previous Financial Year.
- (f) Loy Yang B Trader will ensure that the calculation of the Loy Yang B Trading Loss is audited by its auditors and that its auditors will provide to VPX as soon as reasonably practicable after the end of the Financial Year a certificate certifying that the calculation of the Loy Yang B Trading Loss has been carried out in accordance with generally accepted Australian accounting principles and practices and with this rule 160.8.
- (g) Any certificate given to VPX by Loy Yang B Trader's auditors pursuant to rule 160.8(f) will, upon reasonable prior notice from a Pool Customer, be made available by VPX for inspection at VPX's offices by that Pool Customer.
- (h) On or before 31 May in each Financial Year after the Financial Year ending 30 June 1996, VPX must:
  - (1) notify Pool Customers of the LYB Uplift Payment Rate (2) for the following Financial Year; and
  - (2) make available to Pool Customers VPX's estimate of what the LYB Uplift Payment Rate (2) will be for each of the 2 Financial Years immediately following the Financial Year referred to in paragraph (1).
- (i) The information provided under rule 160.8(h)(2) is indicative only. The actual LYB Uplift Payment Rate (2) for a Financial Year may differ from the estimates provided under that rule. VPX is not liable whether in

contract, tort (including negligence) or otherwise if the estimated figures provided under that rule differ from the actual figures.

(j) If either:

- (1) the Consumer Price Index: All Groups Index Number Melbourne or the Australian Financial Markets Association (AFMA) End of Day 1 Year Swap Reference Rate ceases to be published at the intervals contemplated in this rule 160; or
- (2) the method of calculation of the Consumer Price Index: All Groups Index Number Melbourne or the Australian Financial Markets Association (AFMA) End of Day 1 Year Swap Reference Rate is altered in a material way,

then VPX, after consultation with Loy Yang B Trader and the Pool Customers, may determine an appropriate replacement index or interest rate (as the case may be) and may make any necessary consequential amendments to these rules."

#### 4. Rule 180 - Payment

4.1 Rules 180.2 to 180.6 inclusive are to be amended so that they read as follows:

##### "180.2 Preliminary Statements

Within 5 Business Days after the end of each Payment Period, VPX must give:

- (a) each Participant a draft of the statement to be given to the Participant under rule 180.4 together with supporting data relating to the amount of electricity bought and sold in that Payment Period and the prices at which that electricity was bought and sold by the Participant; and
- (b) Loy Yang B Trader a draft of the statement to be given to it under rule 180.4 together with such supporting data as VPX considers appropriate relating to that Payment Period.

##### 180.3 Disputes

If VPX and any Participant or SECV disputes either the net amount stated in the draft statement given to it under rule 180.2 to be payable by or to it or the supporting data, then VPX and the Participant or SECV (as the case may be) must use their reasonable endeavours to resolve the dispute within 18 Business Days of the end of the Payment Period. The dispute must be resolved by agreement or pursuant to rule 70.

##### 180.4 VPX to issue statements

Not later than 18 Business Days after the end of the Payment Period, VPX must give:

- (a) to each Pool Customer a statement stating the amounts receivable under these rules and payable under these rules by the Pool Customer in respect of the relevant Payment Period;
- (b) to each Pool Generator a statement stating the amounts receivable under these rules and payable under these rules by the Pool Generator in respect of the relevant Payment Period; and
- (c) to Loy Yang B Trader a statement stating the amounts receivable or payable by Loy Yang B Trader under rule 160 in respect of the relevant Payment Period.

**180.5 Payment by or to Participants**

No later than 12:00 noon on the twentieth Business Day after the end of the Payment Period, each Participant must pay to VPX in cleared funds the net amount stated to be payable by that Participant in the statement issued to it under rule 180.4 in respect of the Payment Period whether or not the Participant still disputes the net amount payable.

**180.6 Payment to Participants**

Subject to rule 195.2A, on the day on which VPX is paid under rule 180.5 in respect of a Payment Period, VPX must pay to each Participant in cleared funds the net amount stated to be payable to that Participant in the statement issued to it under rule 180.4 in respect of the Payment Period."



**ELECTRICITY INDUSTRY ACT 1993**

**EXEMPTION ORDER UNDER SECTION 160**

**ORDER IN COUNCIL**

The Governor in Council acting under section 160 of the **Electricity Industry Act 1993** (the "Act") hereby makes the following Order:

**1. 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 159 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.

**2. Revocation of Existing Orders**

The following Orders previously made under section 160 of the Act are hereby revoked:

- (a) an Order made on 20 December 1994 and published in Government Gazette S100 on 20 December 1994, which exempts all persons, other than specified persons, from the requirement to hold a licence for specified activities under the Act, as varied by an Order made on 28 November 1995 and published in Government Gazette G 49 on 14 December 1995;
- (b) an Order made on 21 February 1995 and published in Government Gazette S16 on 23 February 1995, exempting EDL Operations (Clayton) Pty Ltd (ACN 061 503 348) from the requirement to hold a licence for the generation of electricity for supply or sale, as amended by an Order made on 28 November 1995 and published in Government Gazette G 49 on 14 December 1995;
- (c) an Order made on 16 January 1996 exempting the Melbourne Exhibition Centre from the requirement to hold a licence for the distribution, supply or sale of electricity.

**3. Definitions**

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

"Distribution Code" means the code of that name from time to time approved by the Office of the Regulator General;

"distribution company" has the same meaning as in the Act;

"franchise customer" has the same meaning as in the Act;

"generated electrical output" has the same meaning as "Generated Output" in the System Code;

"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 (examples of such premises being a building, shopping centre, industrial park, caravan park, marina, lodging house, market, arcade or exhibition centre);

"IOA" means the agreement entitled "Interconnection Operating Agreement" dated 14 July 1986 between the State Electricity Commission of Victoria, the Electricity Commission of New South Wales and Electricity Trust of South Australia;

"metered intermediary sale of electricity" means the sale of electricity by:

- (a) a customer of a retailer to lodgers or other licensees within that customer's own premises for residential purposes only (for example, by a landlord of a residential tenancy or the owner of a rooming house or caravan park); or
- (b) the proprietor of a market, arcade or exhibition centre (not otherwise specifically exempted under section 160 of the Act) to a licensee or occupant of a part of the premises comprising the relevant market, arcade or exhibition centre,

in each case at a separately metered, volume related charge;

"MW" means megawatts;

"non-franchise customer" has the same meaning as in the Act;

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

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

"**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.

"**System Code**" means the code of that name from time to time approved by the Office of the Regulator-General;

"**Tariff Order**" means the Order made under section 158A of the Act;

"**unmetered intermediary sale of electricity**" means the sale of electricity for use in premises in respect of which, as at the date of this Order, it is customary for electricity to be sold by the owner or occupier of those premises without the consumption of that electricity being separately metered, examples of such customary circumstances being:

- (a) sale by a person such as a body corporate or building owner supplying perimeter lighting or by a shopping centre owner supplying services such as common lighting or air conditioning; and
- (b) sale by the proprietor of a market, arcade or exhibition centre.

**4. Certification by Office**

If the Office of the Regulator-General issues a certificate stating that, in the opinion of the Office, a particular activity does or does not constitute:

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

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

Dated 25 June 1996

Responsible Minister:

ALAN R. STOCKDALE

Treasurer

Department of Treasury and Finance

ANNETTE WILTSHIRE

Acting Clerk of Executive Council

## SCHEDULE

Column 1

Column 2

## 1. Exempt Persons

Any person

## Exemption

The generation of electricity for supply or sale where:

- (a) in the case of an electricity generator which is not part of a group of generators connected at a common point of connection to a transmission network or distribution network, the generated electrical output of the relevant generator is less than 30MW; and
- (b) in the case of a group of electricity generators which are connected at a common point of connection to a transmission network or distribution network, the aggregate generated electrical output of the relevant group of generators 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 is supplied or sold to a retailer or to a non-franchise customer; and
- (b) the person relying on the exemption observes 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 System Code to be centrally dispatched.

**2. Exempt Persons**

Loy Yang B Power Station Pty Limited (ACN 052 530 551)

Mission Energy Australia Ltd (ACN 055 563 785) as managing partner of the Latrobe Power Partnership

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

**Exemption**

The generation of electricity by the Loy Yang B power station for supply or sale to the State Electricity Commission of Victoria.

**3. Exempt Persons**

Electricity Trust of South Australia ("ETSA") and any person who in accordance with the laws of South Australia succeeds to the entitlements of ETSA under the IOA

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 IOA, the Snowy Mountains Hydro-electric Agreement or the Hume Power Station Agreement

**Exemption**

The generation of electricity for supply or sale:

- (a) in the case of ETSA and ECNSW, pursuant to the IOA; and
- (b) in the case of ECNSW (and any successor to its entitlements under the Snowy Mountains Hydro-electric Agreement), pursuant to the Snowy Mountains Hydro-electric Agreement; and
- (c) in the case of ECNSW (and any successor to its entitlements under the Hume Power Station Agreement), pursuant to the Hume Power Station Agreement,

to the State Electricity Commission of Victoria.

**4. Exempt Persons**

Any person

**Exemption**

The intermediary distribution or supply 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 person relying on the exemption observes all applicable provisions of the Distribution Code; and
- (b) any dispute relating to the intermediary distribution or supply between the person relying on the exemption and the person for whom that person provides intermediary distribution or supply is, except where both such persons otherwise agree, resolved in accordance with the usual dispute resolution process applying as between them.

**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 franchise or non-franchise customer any rights they may have if the supply arrangements were not so structured or restructured; or

- (b) a retailer the ability to sell electricity to a franchise or a non-franchise customer.

If the Office of the Regulator-General issues a certificate stating that in the opinion of the Office the structuring or restructuring of supply arrangements may have an effect specified in the preceding paragraph, then the arrangements may have that effect for the purposes of this Order.

## 5. 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 person relying on the exemption observes all applicable provisions of the Distribution Code and the Tariff Order; and
- (b) any dispute relating to the metered intermediary sale of electricity between the person relying on the exemption and the person to whom that person sells electricity is, except where both such persons otherwise agree, resolved in accordance with the usual dispute resolution process applying as between them.

Where the person to whom this exemption applies is the proprietor of a market, arcade or exhibition centre (and is not otherwise specifically exempted under section 160 of the Act), this exemption is subject to the additional conditions that:

- (a) if the occupant will remain in occupation for more than three months or has power requirements in excess of one light and one single 10-amp power outlet (single or multi phase), the occupant's supply must be separately metered by the relevant distribution company;
- (b) if the occupant will remain in occupation for less than three months or has power requirements less than or equal to one light and one 10-amp power outlet (single or multi phase), the occupant's supply may be:
  - (i) metered by subsidiary meters and electricity sold in accordance with conditions as determined by the relevant distribution company; or
  - (ii) metered by permanent meters to be read by the relevant distribution company, in which case the proprietor is responsible to the relevant distribution company for all electricity charges and is required to pay a Special Reading Fee (as detailed in the relevant distribution company's approved statement of charges approved by the Office of the Regulator-General) when a meter reading is required outside the routine meter reading times.

Such meters must be grouped at a common metering position as agreed with the relevant distribution company. Where meters are required to be moved or removed at the end of a tenancy, the installation shall be treated as a temporary supply in accordance with the Tariff Order or any approved statement of charges approved by the Office of the Regulator-General.



This condition is intended to apply in substance the principles of clause 10.5.3 of the State Electricity Commission of Victoria's Tariff Guide to the supply and sale arrangements referred to in this condition. If the Office of the Regulator-General issues a certificate stating that this condition applies in a specified way to any supply and sale arrangements, then this condition applies to those arrangements in the manner specified in the Office of the Regulator-General's certificate.

**6. Exempt Persons**

Any person

**Exemption**

The unmetered 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 person relying on the exemption observes all applicable provisions of the Distribution Code; and
- (b) **any dispute relating to the unmetered intermediary sale of electricity between the person relying on the exemption and the person to whom that person sells electricity is, except where both such persons otherwise agree, resolved in accordance with the usual dispute resolution process applying as between them.**

**Limitations**

This exemption does not apply to a person engaging in the unmetered intermediary sale of electricity in respect of any premises where:

- (a) in relation to any existing premises, the existing supply arrangements are restructured; or

- (b) in relation to any new premises, the supply arrangements are structured,

in such a way that they may have the effect of denying:

- (c) a franchise or non-franchise customer any rights they may have if the supply arrangements were not so structured or restructured; or
- (d) a retailer the ability to sell electricity to a franchise or a non-franchise customer.

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**7. Exempt Persons**

Any person

**Exemption**

The sale of electricity by a person to a related body corporate of the person, where each such person is a non-franchise customer.

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**8. Exempt Persons**

Department of Natural Resources and the Environment

**Exemption**

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.

**Conditions**

This exemption is subject to the conditions that the Department observes all applicable provisions of:

- (a) the Tariff Order as if it were a reseller; and
- (b) the Distribution Code.

9. Exempt Persons

Alpine Resorts Commission

**Exemption**

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 Commission observes all applicable provisions of:

- (a) the Tariff Order as if it were a reseller;  
and
- (b) the Distribution Code.

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10. Exempt Persons

Lions Village Licola Incorporated

**Exemption**

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 all applicable provisions of:

- (a) the Tariff Order as if it were a reseller;  
and
- (b) the Distribution Code.

**11. Exempt Persons**

Energy South

**Exemption**

The distribution, supply and sale of electricity in the areas of Bonang, Tebbutt, Dedick, Goongerah, Delegate River, Bendoc and Lower Bendoc, in each case in the manner and to the extent that Energy South distributes, supplies and sells electricity in those areas as at the date of this Order.

**12. Exempt Persons**

ETSA Corporation

**Exemption**

The distribution, supply and sale of electricity in the area of Point Lindsay in the manner and to the extent that ETSA Corporation distributes, supplies and sells electricity in that area as at the date of this Order.

**13. Exempt Persons**

Federal Airports Corporation

**Exemption**

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

**Conditions**

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

- (a) observes all applicable provisions of the Tariff Order;
- (b) observes all applicable provisions of the Distribution Code, the Wholesale Metering Code, the Supply and Sale Code and the Retail Tariff Metering Code;
- (c) does not take any action which prevents a non-franchise customer from purchasing electricity from a seller of its choice; and

- (d) does not take any action which prevents a retailer from selling electricity to a non-franchise customer.
- 

**14. Exempt Persons**

Melbourne Exhibition Centre

**Exemption**

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 observes the Tariff Order;
- (b) Melbourne Exhibition Centre observes 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 is, except where both parties otherwise agree, resolved in accordance with the usual dispute resolution process applying as 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.

**15. Exempt Persons**

**Exemption**

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

**Conditions**

This exemption is subject to the conditions that HRL observes all applicable provisions of the Distribution Code and the Tariff Order.



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