



Government of Western Australia
Energy Policy WA

Increasing the threshold for application of the electricity generation licence exemption

Consultation paper

April 2022

Working together for a **brighter** energy future.

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1. Overview

1.1 Requirement to hold an electricity licence

The *Electricity Industry Act 2004* (Act) requires that a person that constructs or operates electricity generating works holds a licence or an exemption from the requirement to hold a licence.

The Economic Regulation Authority (ERA) is responsible for administering the electricity licensing scheme.

The Act empowers the Governor to grant exemptions from the requirement to hold an electricity licence, which are contained in the *Electricity Industry Exemption Order 2005* (the Order). The Order provides:

- a class-based licence exemption for a person that constructs or operates generating works:
 - with a capacity of less than 30 megawatts (MW) at a connection point; and
 - 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 of above 30MW.

More information on generation licence exemptions is available in section 2.

The Minister for Energy is responsible for the Act and is supported in this role by Energy Policy WA. This function includes providing advice to the Governor on behalf of Government about proposals for new electricity licence exemptions.

1.2 Context

Following a 2015 review, a proposal to repeal the requirement for electricity generating works to be licensed was incorporated into the *Licensing and Other Authorisations Amendment Bill 2016*. This Bill did not progress through Parliament at the time, but the rationale for the proposal is still relevant and a similar amendment is under consideration for incorporation into a broader package of amendments to energy legislation.

However, in advance of that legislation change Energy Policy WA has received an application for a licence exemption to allow the generation of electricity from a facility greater than 30MW but less than 100MW¹.

Energy Policy WA considers that it is timely to review whether the threshold in the existing generation licensing exemption should be increased as an interim measure to reduce red tape for the industry, prior to Parliament's consideration in due course of the removal of the requirement for generators to be licensed.

1.3 Rationale for amending the generation exemption

Applying for and holding a licence comes with costs. More information on the types and magnitude of costs relating to generation licensees is available in section 3. When a generation licence is issued by the ERA, specific obligations are imposed on licensees. The ERA's *Electricity Compliance Reporting Manual*² lists these obligations, which include service standards, asset management requirements and safety matters.

¹ Moonies Hill Energy Pty Ltd, on behalf of FRWF Stage 1 Pty Ltd, has provided an application to Energy Policy WA for a licence exemption to allow the generation of electricity at the Flat Rocks Wind Farm Stage 1 Project. Further information on the application can be found at <https://www.wa.gov.au/organisation/energy-policy-wa/generation-licence-exemption-application-frwf-stage-1-pty-ltd>.

² *Electricity Compliance Reporting Manual*, 2014. Available at <https://www.erawa.com.au/electricity/electricity-licensing/document-archive/regulatory-guidelines>.

While historical audits and review reports submitted to the ERA indicate a good overall level of performance and compliance with these licence conditions, other regulatory mechanisms also provide effective performance oversight over generators additional to the licensing requirements. More information on those other regulatory mechanisms is available in section 4.

Energy Policy WA considers that the costs of having to comply with a generation licence outweigh the benefits of licensing generators, meaning that the licence requirements result in little or no benefits to customers supplied by generators, nor to energy consumers more generally.

The ERA has also identified this issue in multiple reports, most recently in a report published in November 2020, and supports the proposal to remove the requirement for generators to be licensed³. The 2015 review relating to the proposed repeal of the generation licensing legislative requirements conducted by the former Public Utilities Office received support from industry.

However, an amendment to the Order cannot exempt all generators from the requirement to hold a licence; the removal of the licensing requirement for all generators must be made via an Act of Parliament. Instead, the proposed amendment to the Order increases the threshold for the application of the exemption to remove the regulatory and cost burden from a greater proportion of generators. This is an interim measure while the removal of generation licensing is considered as part of a broader package of energy legislative amendments.

1.4 Recommendation

It is recommended that the exemption for a person that constructs or operates exempt generating works under a certain threshold be amended to increase the threshold from 30MW to 100MW nameplate capacity at a connection point.

Subject to feedback from stakeholders, it is proposed that no additional conditions are attached to this exemption as a result of the increase in the threshold. This is due to the presence of other mechanisms to ensure generating works operate safely and supply reliable and secure electricity.

1.5 Next Steps

Following public consultation, Energy Policy WA will consider the submissions made and provide advice to the Minister for Energy on amendments to the Order for implementation in mid-2022.

Activity	Timing (indicative)
Publish consultation paper	April 2022
Review submissions	May 2022
Seek Ministerial permission to draft licence exemptions in the Electricity Order	May 2022
Drafting and preparation of licence exemption documents	June 2022
Ministerial Approval of draft exemptions	June 2022

³ Operation of the electricity licensing scheme and licensee compliance – Annual Report 2019/20, available at <https://www.erawa.com.au/cproot/21589/2/Operation-of-the-electricity-licensing-scheme-and-licensee-compliance---Annual-Report-201920---Final-clean-.PDF>

Activity	Timing (indicative)
Submission of draft amendments to Executive Council for approval by the Governor	July 2022
Implementation	July 2022

1.6 Information requests

Requests for information relating to this process will be treated in accordance with the *Freedom of Information Act 1992 (WA)* and Energy Policy WA processes.

1.7 Making a submission

Feedback is requested from stakeholders on matters raised in this paper. Submissions are requested by 5.00pm (AWST) on Friday 13 May 2022 and can be provided by email to submissions@energy.wa.gov.au. Please contact Sarah Woenne if you have any queries via sarah.woenne@energy.wa.gov.au. All submissions received will be published on the Energy Policy WA website, unless a specific request for confidentiality is made.

1.8 Stakeholder questions

Energy Policy WA encourages stakeholders to respond to the following questions about the recommendation outlined in this paper.

Please note, all proposed licence exemptions are assessed against the elements of the public interest test outlined in section 8 of the Act.

Question 1

Is it appropriate for the threshold for exempt generating works to be increased?

Question 2

If the threshold for exempt generating works should be increased, is it appropriate for the threshold to increase to 100MW or, alternatively, what should be the new threshold?

Question 3

What conditions, if any, should attach to the generation licence exemption if the threshold is increased? Should the requirement for generators connected to the South West Interconnected System to comply with the Electricity Industry (Metering) Code 2012 be maintained, or is this requirement adequately imposed by the Access Code? If it is retained, does the obligation need to be extended to include the North West Interconnected System and other licensed networks?

Question 4

Are there any other relevant matters that Energy Policy WA should consider?

2. Existing generation licence exemptions

Section 8 of the Act enables the Governor to, by order, exempt a person or class of persons from the requirement to have a licence if he or she is satisfied that it would not be contrary to the public interest to do so.

The Governor must take into account the following matters when determining if a proposed exemption would not be contrary to the public interest:

- environmental considerations;
- social welfare and equity considerations;
- economic and regional development, including employment and investment growth;
- the interests of electricity customers generally or of a class of electricity customers;
- the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- the importance of competition in electricity industry markets;
- the policy objectives of government in relation to the supply of electricity; and
- any other matter that he or she considers relevant.

The Governor may impose conditions that attach to an exemption that a person must comply with to remain exempt. Conditions can include, for example, an obligation to supply records to the Coordinator of Energy or adhere to other regulatory instruments.

Currently, the Order provides a class exemption to a person that constructs or operates generating works with a capacity of less than 30MW measured at the connection point to a distribution or transmission system. If that system is part of Western Power's network, the metering arrangements must comply with the Electricity Industry (Metering) Code 2012 (the Metering Code). This condition to comply with the Metering Code may be redundant as the Electricity Network Access Code 2004 also requires generators connected to the Southwest Interconnected System to comply with the Metering Code.

The Order also provides individual generation licence exemptions to specific persons and supply scenarios (Table 1), usually at a location that is outlined in the exemption. They provide precedence for generation licence exemptions for works with greater than 30MW in capacity.

Table 1: Generation licence exemptions for works above 30MW

Clause	Generation Exemption
4A	All generating works, regardless of size, that supply another person on the same non-residential property.
10	A person that constructs or operates generating works, regardless of size, pursuant to a State Agreement (for example, BHP for its Newman operations).
23	CSBP Limited to operate its 34.4MW generating works in Kwinana.
24	Kwinana WTE Project Co Pty Ltd to operate its 45MW waste-to-energy generating works.
29	Works owned and operated by Fortescue Metals Group that connect to its Pilbara Energy Connection transmission system. The capacity of some components exceed 100MW.

3. Costs of generation licences

Generator licensees pay the ERA an annual licence fee⁴, quarterly standing charges⁵ and specific charges relating to assessing a licence application⁶.

The quarterly standing charge is payable as a contribution to the annual costs incurred by the ERA in performing its licensing functions. The ERA has advised Energy Policy WA that the total standing charge in 2019-20 was \$209,000. The individual standing charge per generation licensee is calculated in proportion to the level of generation capacity held by the licensee.

While there is no publicly available information on the scale of costs in relation to applying for a generation licence, a conservative estimate is between \$5,000 and \$7,000 if technical and financial assessments are required.

In addition to these fees, sections 13 and 14 of the Act require a licensed generator to engage an auditor to conduct a regular assessment of its licence compliance and a review of its asset management processes. The cost to engage a consultant to perform an audit and review can also be significant⁷. Licensees must have systems and processes in place to ensure compliance with the licensing obligations.

4. Other regulatory oversight mechanisms

While historical audits and review reports submitted to the ERA indicate a good overall level of performance and compliance with these licence conditions, other regulatory mechanisms also provide effective performance oversight over generators independently of the licensing requirements (Table 2).

As an example, regardless of whether a generator is licensed or not, it must still enter into an Access Contract and Connection Agreement with Western Power to connect equipment to and use the network. This ensures generators comply with Western Power's Technical Rules and that Western Power has control over the specification of equipment that connects to its network.

⁴ Economic Regulation Authority (Licensing Funding) Regulations 2014 (Licensing Funding Regulations), regulation 6.

⁵ Licensing Funding Regulations, regulation 7.

⁶ Licensing Funding Regulations, regulation 5.

⁷ A large generator previously advised the former Public Utilities Office of estimated costs of activities associated with each audit and review process of about \$100,000.

Table 2: Regulatory obligations imposed on generation facilities additional to licensing requirements

Instrument	Mechanism
<p>Electricity Network Access Code 2004</p>	<p>The <i>Electricity Networks Access Code 2004 (Access Code)</i>⁸ requires an electricity network operator to enter into a network access contract with a generator, when the generator makes a request to connect to the network.</p> <p>The Access Code requires generators to comply with the network operator's Technical Rules prescribing performance and technical standards for equipment connected to the network, provide technical information on request, pay certain fees and charges, and comply with the Electricity Industry (Metering) Code 2012.</p> <p>The Access Code also requires generators to comply with 'good industry practice'⁹. In addition, if the network operator considers that an applicant requesting access presents a material risk because of technical or financial resources, it can require that applicant to provide security. Contract termination arrangements are also provided for under the Access Code.</p> <p>Western Power can enforce compliance as the counterparty to a connection agreement.</p> <p>Penalties for non-compliance with the Access Code are enforced in accordance with the Electricity Industry (Access Code Enforcement) Regulations 2005 outside of the licensing scheme.</p>
<p>Pilbara Networks Access Code</p>	<p>The Pilbara Networks Access Code codifies a light-handed access regime for Horizon Power's coastal Pilbara network and Alinta Energy's Port Hedland network. The Code includes the principles that network service providers must use in developing prices, and the information that a network service provider must make available to facilitate timely and effective negotiation. The Pilbara Networks Access Code requires an electricity network operator to enter into a network access contract with a generator when the generator makes a request to connect to the network.</p> <p>The Pilbara Networks Rules (PNR) establish rules for the operation, management, security and reliability of Pilbara networks and the functions of the Pilbara independent system operator, Pilbara ISOCO.</p> <p>The PNR include Harmonised Technical Rules for the North-West Interconnected System that prescribe the technical performance requirements of the power system and equipment connected to the network, including generation facilities.</p> <p>While obligations of the PNR are primarily imposed on network service providers, these obligations are passed through to generators and retailers through commercial arrangements, such as obligations for balancing, essential systems services and outage management.</p>

⁸ Horizon Power is not covered by the Access Code.

⁹ The Access Code defines 'good electricity industry practice' as "the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines".

Instrument	Mechanism
Wholesale Electricity Market Rules	<p>Generators that are market participants in the Wholesale Electricity Market (WEM) must comply with the Electricity Industry (Wholesale Electricity Market) Regulations 2004 and the Wholesale Electricity Market Rules (WEM Rules). The Australian Energy Market Operator is responsible for operating the WEM in accordance with the WEM Rules, while the ERA performs a market surveillance role and monitors and enforces compliance with the Rules. A focus of these obligations is ensuring that capacity is available for dispatch to meet system demand requirements. These obligations are also reinforced by commercial arrangements, usually between generators and retailers, for the delivery of electricity supplies and capacity credits.</p> <p>The WEM Rules require payment of Credit Support at registration and include mechanisms to ensure the generator is able to meet its prudential requirements¹⁰.</p>
<i>Environmental Protection Act 1986</i>	<p>The Department of Water and Environmental Regulation is responsible under the <i>Environmental Protection Act 1986</i> for environmental licensing and registration of prescribed premises, including electricity generating works, the issuing of works approvals, and administration of regulations. It is also responsible for ensuring prescribed premises comply with relevant legislation and achieves this through monitoring, audits and compliance inspections. The Department can also issue a closure notice for a prescribed premise, and under that notice include specific actions that need to be taken.</p>
<i>Electricity Act 1945</i>	<p>All persons who undertake electrical work must comply with extensive technical and safety requirements under the <i>Electricity Act 1945</i>, its supporting regulations and the Western Australian Electrical Requirements. The Building and Energy Division of the Department of Mines, Industry Regulation and Safety monitors and enforces compliance with these obligations.</p>

5. Recommendation

There is good evidence that the costs of generation licensing outweigh the benefits. As such, Energy Policy WA considers that it is timely to consider whether the threshold in the existing generation licensing exemption should be increased. This amendment to the Order would be an interim measure to reduce red tape for the industry while the removal of generation licensing is considered as part of a broader package of energy legislation amendments.

It is recommended that the exemption for a person that constructs or operates exempt generating works under a certain threshold be amended to increase the threshold from 30MW to 100MW nameplate capacity at a connection point.

Subject to feedback from stakeholders, it is proposed that no additional conditions are attached to this exemption as a result of the increase in the threshold. This is due to the presence of other mechanisms to ensure generating works operate safely and supply reliable and secure electricity.

¹⁰ Wholesale Electricity Market Rules, clauses 2.38 2.42 and 2.43. Available at <https://www.wa.gov.au/government/document-collections/wholesale-electricity-market-rules>.



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