

Western Australia

Electricity Industry Act 2004

Electricity Industry Exemption Order 2005

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Electricity Industry Exemption Order 2005

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Defined Terms

Electricity Industry Exemption Order 2005

1. Citation

This order is the *Electricity Industry Exemption Order 2005*.

2. Commencement

This order comes into operation on 1 January 2006.

3. Exemption for generating works under 30 MW

(1) In this clause —

connection point means a point at which the generating works are connected to a transmission system or a distribution system;
generation capacity, in relation to generating works under construction, means the total generation capacity in megawatts that the generating works will have after construction is completed.

(2) A person is exempt from the *Electricity Industry Act 2004* section 7(1) if the generation capacity of the generating works concerned is less than 30 MW at each connection point.

(3) The exemption provided for in subclause (2) is subject to the condition that, if the generating works are connected to a transmission system or distribution system of a relevant corporation that forms part of the South West interconnected system, the metering of the supply of electricity from those works must be undertaken in accordance with the procedures

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and arrangements set out in the *Electricity Industry Metering Code 2005*.

4. Exemptions for on-supply to commercial premises

(1) In this clause —

commercial premises means premises or any part of premises used, or intended to be used, for commercial or industrial purposes;

scheme has the meaning given to that term in the *Strata Titles Act 1985* section 3(1);

strata company has the meaning given to that term in the *Strata Titles Act 1985* section 3(1).

(2) A person (the **supplier**) is exempt from the *Electricity Industry Act 2004* section 7(2) if the transmission system concerned is used or to be used solely for the transportation of electricity for consumption on commercial premises under the control or management of the supplier.

(3) A person (the **supplier**) is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is used or to be used solely for the transportation of electricity for consumption on commercial premises under the control or management of the supplier.

(4) A person (the **supplier**) is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold for consumption on commercial premises under the control or management of the supplier.

(5) For the purposes of this clause commercial premises are under the control or management of a supplier if the supplier is —

- (a) the owner or occupier of the premises; or
- (b) in the case of premises on land to which a scheme relates, the strata company for the scheme.

- (6) The exemptions provided for in this clause do not apply to the Rottnest Island Authority established under the *Rottnest Island Authority Act 1987*.

5. Exemptions for on-supply to residential premises

- (1) In this clause —

administering body has the meaning given to that term in the *Retirement Villages Act 1992* section 3(1);

residential premises means premises or any part of premises used, or intended to be used, as a person's principal place of residence but does not include a site as defined in the *Caravan Parks and Camping Grounds Act 1995* section 5(1);

retirement village has the meaning given to that term in the *Retirement Villages Act 1992* section 3(1);

scheme has the meaning given to that term in the *Strata Titles Act 1985* section 3(1);

strata company has the meaning given to that term in the *Strata Titles Act 1985* section 3(1).

- (2) A person (the **supplier**) is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is used or to be used solely for the transportation of electricity for consumption on residential premises under the control or management of the supplier.
- (3) A person (the **supplier**) is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold for consumption on residential premises under the control or management of the supplier.
- (4) For the purposes of this clause residential premises are under the control or management of a supplier if the supplier is —
- (a) the owner of the premises;
 - (b) in the case of premises on land to which a scheme relates, the strata company for the scheme; or

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- (c) in the case of premises in a retirement village, the administering body of the retirement village.
- (5) The exemptions provided for in this clause are subject to the conditions set out in clause 6(4) to (9).
- (6) The exemptions provided for in this clause do not apply to the Rottnest Island Authority established under the *Rottnest Island Authority Act 1987*.

6. Conditions applying to exemptions under clause 5

- (1) In this clause —
 - electricity reticulation system** means any apparatus, plant or equipment that is used for, or in connection with, the transportation of electricity to the relevant premises;
 - relevant premises** means premises to which an exemption provided for in clause 5 applies;
 - resident**, in relation to the relevant premises, means a person who uses those premises as his or her permanent place of residence.
- (2) For the purposes of this clause, electricity services are services for, or in connection with, the supply of electricity.
- (3) Without limiting subclause (2), electricity services include —
 - (a) the provision and maintenance of an electricity reticulation system;
 - (b) the connection of the relevant premises to an electricity reticulation system;
 - (c) the provision, maintenance and reading of a meter to measure and record the quantity of electricity supplied to the relevant premises;
 - (d) the preparation and issue of accounts in relation to the supply of electricity to the relevant premises; and
 - (e) anything incidental to or associated with a matter referred to in paragraph (a), (b), (c) or (d).

- (4) If electricity supplied to the relevant premises by the supplier is supplied to the supplier by the Electricity Retail Corporation, any charge imposed by the supplier for the electricity must not exceed the charge for metered consumption —
- (a) to be paid under the *Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006* by consumers for electricity supplied for residential use only; and
 - (b) applying to electricity supplied by the Electricity Retail Corporation on the day of the supply.
- (5A) If electricity supplied to the relevant premises by the supplier is supplied to the supplier by the Regional Power Corporation, any charge imposed by the supplier for that electricity must not exceed the charge for metered consumption —
- (a) to be paid under the *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006* by consumers for electricity supplied for residential use only; and
 - (b) applying to electricity supplied by the Regional Power Corporation on the day of the supply.
- (5) If electricity supplied to the relevant premises is generated using generating works that are owned or operated by the supplier, any charge imposed by the supplier for that electricity must not exceed the amount necessary for the supplier to recover the costs of generation.
- (6) Any fees or charges imposed by the supplier for the provision of electricity services in relation to the relevant premises must not, in total —
- (a) in a licence area in which the Electricity Retail Corporation sells electricity to customers, exceed the fixed charge —
 - (i) to be paid under the *Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006* by consumers for electricity supplied for residential use only; and

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- (ii) applying to electricity supplied by the Electricity Retail Corporation on the day of the supply;
- or
- (b) in a licence area in which the Regional Power Corporation sells electricity to customers, exceed the fixed charge —
 - (i) to be paid under the *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006* by consumers for electricity supplied for residential use only; and
 - (ii) applying to electricity supplied by the Electricity Retail Corporation on the day of the supply.
- (7A) Subclause (6) applies even if the electricity is generated using generating works that are owned or operated by the supplier.
- (7) The supplier must make available to each resident of the relevant premises information that clearly sets out —
 - (a) the quantity of electricity supplied to the resident; and
 - (b) the fees and charges payable by the resident —
 - (i) for electricity supplied; and
 - (ii) for the provision of electricity services.
- (8) Information referred to in subclause (7) must be made available in a manner that is easily accessible.
- (9) If information referred to in subclause (7) is not included in an account issued to a resident of the relevant premises, the supplier must inform the resident how to gain access to the information.

[Clause 6 amended in Gazette 8 May 2009 p. 1498-9.]

7. Exemptions for supply to Aboriginal communities

- (1) In this clause —

Aboriginal community has the meaning given to that term in the *Aboriginal Communities Act 1979* section 3;

Aboriginal community premises means any premises that are —

- (a) owned, occupied or leased by an Aboriginal community or members of an Aboriginal community; or
 - (b) used solely or principally for the purposes of an Aboriginal community.
- (2) A person is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is used or to be used solely for the transportation of electricity for consumption on Aboriginal community premises.
 - (3) A person is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold for consumption on Aboriginal community premises.
 - (4) The exemptions provided for in this clause do not apply to the Electricity Networks Corporation, the Electricity Retail Corporation or the Regional Power Corporation.

[Clause 7 amended in Gazette 31 Mar 2006 p. 1158.]

8. Exemptions for operations under Pilbara Energy Project Agreement

- (1) In this clause —
PEP Agreement has the meaning given to “the Agreement” in the *Pilbara Energy Project Agreement Act 1994* section 3.
- (2) A person is exempt from the *Electricity Industry Act 2004* section 7(1) if the generating works concerned are constructed or operated pursuant to the PEP Agreement.
- (3) A person is exempt from the *Electricity Industry Act 2004* section 7(2) if the transmission system concerned is constructed or operated pursuant to the PEP Agreement.

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- (4) A person is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is constructed or operated pursuant to the PEP Agreement.
- (5) A person is exempt from the *Electricity Industry Act 2004* section 7(4) if —
 - (a) the electricity is sold to customers pursuant to the PEP Agreement; and
 - (b) each of those customers consumes more than 160 MWh of electricity per annum.

9. Exemption for sale to certain customers under Iron Ore Beneficiation (BHP) Agreement

A person is exempt from the *Electricity Industry Act 2004* section 7(4) if —

- (a) the electricity is sold to customers pursuant to the Agreement as defined in the *Iron Ore Beneficiation (BHP) Agreement Act 1996* section 3; and
- (b) each of those customers consumes more than 160 MWh of electricity per annum.

10. Exemptions for operations under various government agreements

- (1) In this clause —
relevant agreement means —
 - (a) the Agreement as defined in the *Iron Ore (Hamersley Range) Agreement Act 1963* section 2;
 - (b) the Agreement as defined in the *Iron Ore (Mount Newman) Agreement Act 1964* section 2; and
 - (c) the Agreement as defined in the *Iron Ore (Robe River) Agreement Act 1964* section 2.
- (2) A person is exempt from the *Electricity Industry Act 2004* section 7(1) if the generating works concerned are constructed or operated pursuant to a relevant agreement.

- (3) A person is exempt from the *Electricity Industry Act 2004* section 7(2) if the transmission system concerned is constructed or operated pursuant to a relevant agreement.
- (4) A person is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is constructed or operated pursuant to a relevant agreement.
- (5) A person is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold to customers pursuant to a relevant agreement.

11. Conditions applying to exemptions under clause 10

- (1) In this clause —
code provision means a provision of the code of conduct as defined in the *Electricity Industry Act 2004* section 78 other than —
 - (a) Parts 2, 9, 11, 13 and 14; and
 - (b) clauses 4.4(1)(t) and (bb), 5.2(1)(c), 6.10, 7.1(1)(c)(ii), 10.1(1), 10.2(4), 10.4(b) and (c), 10.7(4), 10.8(2), 10.10(2), (4), (5) and (6), 12.1(2)(b), (3) and (4), and 12.5(1)(b) and (c),
of that code.
- (1a) The exemption provided for in clause 10(3) is subject to the condition that the person must comply with any obligation that the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* from time to time imposes on a transmitter as if the person were a transmitter for the purposes of that code.
- (2) The exemption provided for in clause 10(4) is subject to the following conditions —
 - (a) the person must comply with any obligation that the *Electricity Industry (Obligation to Connect) Regulations 2005* regulations 4 and 7(1) from time to time impose on a distributor as if the person were a distributor for the purposes of those regulations;

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- (b) the person must comply with any obligation that a code provision from time to time imposes on a distributor as if the person were a distributor for the purposes of that provision;
 - (c) the person must comply with any obligation that the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* from time to time imposes on a distributor as if the person were a distributor for the purposes of that code.
- (3) The exemption provided for in clause 10(5) is subject to the condition that the person must comply with any obligation that a code provision from time to time imposes on a retailer as if the person were a retailer for the purposes of that provision.
- (4) For the purposes of subclauses (1a) and (2)(c) the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* is taken to be modified so that —
- (a) the words “under a distribution licence, transmission licence or integrated regional licence” are omitted from the definition of “network” in section 3(1); and
 - (b) a report under section 27(1)(a) is not required to set out the information described in Schedule 1 items 8, 14 and 15; and
 - (c) Schedule 1 item 10 does not apply in relation to the first report under section 27(1)(a).

[Clause 11 amended in Gazette 27 Jun 2006 p. 2286-7.]

12. Exemptions for operations in DBNGP corridor

- (1) In this clause —
- DBNGP corridor*** has the meaning given to that term in the *Dampier to Bunbury Pipeline Act 1997* section 27(1);
- DBNGP Transmission*** means DBNGP (WA) Transmission Pty Ltd.

- (2) DBNGP Transmission is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is located or to be located in the DBNGP corridor.
- (3) DBNGP Transmission is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold for consumption in the DBNGP corridor.

13. Exemptions for Electricity Generation Corporation

- (1) The Electricity Generation Corporation is exempt from the *Electricity Industry Act 2004* section 7(2) in relation to the operation of a transmission system for the supply of electricity to Colltech Australia Limited (ABN 24 094 515 992) at premises located at the Collie Power Station, Williams Road, Collie.
- (2) The Electricity Generation Corporation is exempt from the *Electricity Industry Act 2004* section 7(3) in relation to the operation of a distribution system for the supply of electricity to Colltech Australia Limited (ABN 24 094 515 992) at premises located at the Collie Power Station, Williams Road, Collie.
- (3) The Electricity Generation Corporation is exempt from the *Electricity Industry Act 2004* section 7(4) in relation to the sale of electricity to —
 - (a) Billiton Aluminium (Worsley) Pty Ltd (ACN 088 336 921), Kobe Alumina Associates (Australia) Pty Ltd (ACN 008 907 524) and Nissho Iwai Alumina Pty Ltd (ACN 009 309 344) pursuant to an agreement dated 24 June 1999 for the supply of electricity to premises located at Wellington Location 5314;
 - (b) Tiwest Pty Ltd (ACN 009 343 364) pursuant to an agreement dated 23 October 1997 for the supply of electricity to premises located at Mason Road, Kwinana; and
 - (c) Transfield Services Kemerton Pty Ltd (ACN 109 619 112) as trustee for the Transfield Services Kemerton

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Trust pursuant to an agreement dated 8 December 2003 for the supply of electricity to premises located at Marriott Road, Kemerton.

[Clause 13 inserted in Gazette 31 Mar 2006 p. 1158-9; amended in Gazette 11 Jan 2008 p. 102.]

13A. Further exemptions for Electricity Generation Corporation — supply to Alstom Limited

(1) In this clause —

Alstom means Alstom Limited (ABN 15 000 038 237);

NewGen power station site means the Site as defined in the agreement entered into by Western Power Corporation and the NewGen Power Kwinana Partnership (Babcock & Brown Kwinana Pty Ltd (ACN 166 803 779) and ERM Kwinana Power Pty Ltd (ABN 84 115 348 171)) on 5 November 2005, being the area of land that is —

- (a) a portion of Reserve 30611 (in particular, part of Lot 3000 and part of Lot 218); and
- (b) part of Lot 22 on Diagram 72310 being part of the land in Certificate of Title volume 1918 folio 62.

(2) The Electricity Generation Corporation is exempt from the *Electricity Industry Act 2004* section 7(3) in relation to the construction and operation of a distribution system for the supply of electricity to Alstom for the purposes of commissioning generating works on the NewGen power station site.

(3) The Electricity Generation Corporation is exempt from the *Electricity Industry Act 2004* section 7(4) in relation to the sale of electricity to Alstom for the purposes of commissioning generating works on the NewGen power station site.

(4) The exemptions provided for in this clause expire on 30 June 2008.

[Clause 13A inserted in Gazette 11 Jan 2008 p. 102-3.]

14. Exemptions for Fremantle Port Authority

- (1) In this clause —
Fremantle Port Authority means the Fremantle Port Authority established under the *Port Authorities Act 1999*.
- (2) Fremantle Port Authority is exempt from the *Electricity Industry Act 2004* section 7(3) in relation to the operation of its distribution systems at Fremantle and Kwinana.
- (3) Fremantle Port Authority is exempt from the *Electricity Industry Act 2004* section 7(4) in relation to the sale of electricity transported through the distribution systems referred to in subclause (2).

[Clause 14 inserted in Gazette 27 Jun 2006 p. 1188.]

15. Exemptions for supply in Eucla

- (1) In this clause —
Eucla means the area constituting the townsite of Eucla for the purposes of the *Land Administration Act 1997*.
- (2) A person is exempt from the *Electricity Industry Act 2004* section 7(3) if the distribution system concerned is located or to be located in Eucla.
- (3) A person is exempt from the *Electricity Industry Act 2004* section 7(4) if the electricity is sold for consumption in Eucla.

[Clause 15 inserted in Gazette 27 Jun 2006 p. 1188.]

Notes

- ¹ This is a compilation of the *Electricity Industry Exemption Order 2005* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Electricity Industry Exemption Order 2005</i>	9 Dec 2005 p. 5878-84	1 Jan 2006 (see cl. 2)
<i>Electricity Industry Exemption Amendment Order 2006</i>	31 Mar 2006 p. 1158-9	1 Apr 2006 (see cl. 2)
<i>Electricity Industry Exemption Amendment Order (No. 2) 2006</i>	27 Jun 2006 p. 2285-7	1 Jul 2006 (see cl. 2)
<i>Electricity Industry Exemption Amendment Order (No. 3) 2006</i>	27 Jun 2006 p. 2287-8	1 Jul 2006 (see cl. 2)
<i>Electricity Industry Exemption Amendment Order 2007</i>	11 Jan 2008 p. 101-3	cl. 1 and 2: 11 Jan 2008 (see cl. 2(a)); Order other than cl. 1 and 2: 12 Jan 2008 (see cl. 2(b))
<i>Electricity Industry Exemption Amendment Order (No. 2) 2009</i>	8 May 2009 p. 1497-9	cl. 1 and 2: 8 May 2009 (see cl. 2(a)); Order other than cl. 1 and 2: 9 May 2009 (see cl. 2(b))

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Aboriginal community	7(1)
Aboriginal community premises	7(1)
administering body.....	5(1)
Alstom.....	13A(1)
code provision.....	11(1)
commercial premises	4(1)
connection point.....	3(1)
DBNGP corridor	12(1)
DBNGP Transmission	12(1)
electricity reticulation system	6(1)
Eucla	15(1)
Fremantle Port Authority	14(1)
generation capacity	3(1)
NewGen power station site	13A(1)
PEP Agreement.....	8(1)
relevant agreement.....	10(1)
relevant premises	6(1)
resident.....	6(1)
residential premises.....	5(1)
retirement village	5(1)
scheme	4(1), 5(1)
strata company	4(1), 5(1)
supplier.....	4(2), 4(3), 4(4), 5(2), 5(3)