

AN AGREEMENT made on/...../.....

between

MURRINDINDI SHIRE COUNCIL, having its Municipal Office at 28 Perkins Street
Alexandra VIC 3714
(**'Council'**)

and

AGL HP1 Pty Ltd (ABN 86 080 429 901), **AGL HP2 Pty Ltd** (ABN 75 080 810 546) and **AGL HP3 Pty Ltd** (ABN 22 080 735 81) as partners in the **AGL HYDRO PARTNERSHIP** (ABN 86 076 691 481), (**'Generation Company'**)

BACKGROUND

A. The Land is;

(a) used by the **Generation Company** for generation functions; and

(b) within the municipal district of the **Council**.

B. The **Generation Company** has elected under section 94(4)(a) of the **Act** to enter into this Agreement with the **Council in lieu** of paying rates in respect of the **Land**.

C. Pursuant to section 94(6A) of the **Act**, the Governor in Council has prescribed a methodology for determining amounts payable by the **Generation Company** under section 94(5) of the **Act** (**'Methodology'**).

D. The **Generation Company** and the **Council** have agreed to;

(a) adopt the **Methodology**, as amended in accordance with clause 2.2 of this Agreement;

(b) the manner of making the payments for each year of the **Term**; and

(c) record their agreement in writing.

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless the contrary intention appears:

- (a) '**Act**' means the *Electricity Industry Act 2000* (VIC).
- (b) '**Council**' means Murrindindi Shire Council and its successors.
- (c) '**Generation Company**' means AGL HP1 Pty Ltd (ABN 86 080 429 901), AGL HP2 Pty Ltd (ABN 75 080 810 546) and AGL HP3 Pty Ltd (ABN 22 080 735 81), as partners in the AGL Hydro Partnership (ABN 86 076 691 481).
- (d) '**Land**' means the land on which the Eildon and Rubicon Hydro Electricity Schemes are constructed, being the land more particularly described in and shown on the plan in Annexure A.
- (e) '**Methodology**' means the Order published by the Governor in Council pursuant to section 94(6A) of the **Act** in the *Victoria Government Gazette* on 11 October 2018, a copy of which is reproduced in Annexure B.
- (f) '**Term**' means the term of this Agreement being 5 years from 1 July 2022 with a mutual option to renew for a further 5 years, which option must be exercised no less than 6 months prior to 1 July 2027.

1.2. In this Agreement, unless the context or subject-matter suggests otherwise:

- (a) a reference to a statute includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements or any of them occurring at any time before or after the making of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes a reference to a person's successors and assigns;

- (d) a reference to a clause is a reference to a clause in this Agreement;
- (e) headings are inserted for convenience and do not affect the interpretation of this Agreement; and
- (f) if a party consists of more than one person this Agreement binds them jointly and each of them severally.

2. PAYMENT TERMS

2.1. The **Generation Company** will, during the **Term**, pay to the **Council** amounts calculated in accordance with this Agreement *in lieu* of paying rates in respect of the **Land**.

2.2. The amount payable by the **Generation Company** to the **Council** in each Financial Year will be calculated in accordance with the **Methodology** except that:

(a) Clause 5(2) of the **Methodology** is deleted and replaced with:

“(2) Where, in any financial year, the power station operates at an average capacity factor of:

- (a) less than 10%, the amount otherwise payable under paragraph 5(1), must be reduced by 50%;
- (b) between 10% and 20%, the amount otherwise payable under paragraph 5(1), must be reduced by 25%”;

(b) when the **Methodology** refers to ‘A1’, ‘the amount to be adjusted’ it is taken to be the base amount referenced under 5(1)(a) ‘\$54,400’ and 5(1)(b) ‘\$1,225’ of the **Methodology**.

(c) if the CPI decreases rather than increases, the amount payable by the **Generation Company** to the **Council** in respect of the relevant Financial Year will be the amount paid by the **Generation Company** to the **Council** in the immediately preceding Financial Year.

2.3. If the Australian Bureau of Statistics ceases to publish the CPI or ceases to publish the CPI in quarterly values, then ‘CPI₂’ will become another Index which the parties reasonably determine most closely approximates the CPI.

2.4. For the avoidance of doubt, the parties agree to interpret the **Methodology** and adjust the amounts specified in clause 5(1)(a) and 5(1)(b) of the **Methodology** in accordance with Annexure C.

2.5. The **Council** will levy the amount payable under this Agreement by sending an invoice to the **Generation Company** by 30 September in the Financial Year in respect of which the amount is payable.

2.6. The **Generation Company** must pay the amount specified in the invoice referred to in clause 2.5 within 30 days of receipt of the invoice.

3. INTEREST

3.1. The **Generation Company** must pay interest at the rate adopted for the purpose of interest on rates under the *Local Government Act 1989* in respect of any payment due by the **Generation Company** to the **Council** that is not paid by the due date.

3.2. Interest is to be calculated on the daily balance outstanding from time to time.

4. VARIATIONS IN WRITING

4.1. Any amendment of or variation of this Agreement must be in writing and be executed by or signed on behalf of the **Council** and the **Generation Company**.

5. DISPUTE RESOLUTION

5.1. In the event that any dispute or difference arises about the performance or as to the meaning of this Agreement, or to any other matter or thing arising under it, such dispute or difference must be submitted to arbitration in accordance with and subject to the Resolution Institute's rules for the conduct of commercial arbitrations.

5.2. Not later than six months prior to the expiry of the Term, the parties must, with reference to the period beginning on or immediately after the expiry of this Agreement, commence negotiations for the purpose of determining the amounts to be paid by the **Generation Company** to **Council** instead of rates, and on the times at which such amounts are to be paid.

5.3. If the parties are unable to agree on the matters described in clause 5.2, then the prevailing legislation in relation to municipal rating of land used for the generation of electricity in the State of Victoria shall apply.

6. GENERAL

6.1. Each party agrees that it will, at all times, act in good faith in relation to the other party with respect to all matters relating to this Agreement.

6.2. Each of the parties must procure each of its employees and agents to sign, execute and deliver all such documents to do all such acts and things as necessary or desirable to give full effect to this Agreement.

7. VICTORIAN LAW

7.1. This Agreement must be interpreted in accordance with the law of Victoria.

8. ENTIRE AGREEMENT

8.1. This Agreement forms the entire agreement between the parties with respect to its subject matter.

Executed as an Agreement

Signed for **AGL HP1 Pty Limited** in its capacity as a partner in the AGL Hydro Partnership by its authorised representative

in the presence of

sign here ► _____ *sign here* ► _____
Authorised Representative Witness

print name _____ *print name* _____

title _____ *title* _____

date _____ *date* _____

Signed for **AGL HP2 Pty Limited** in its capacity as a partner in the AGL Hydro Partnership by its authorised representative

in the presence of

sign here ► _____ *sign here* ► _____
Authorised Representative Witness

print name _____ *print name* _____

title _____ *title* _____

date _____ *date* _____

in the presence of

Signed for **AGL HP3 Pty Limited** in its capacity as a partner in the AGL Hydro Partnership by its authorised representative

sign here ► _____ *sign here* ► _____
Authorised Representative Witness

print name _____ *print name* _____

title _____ *title* _____

date _____ *date* _____

THE COMMON SEAL OF THE MURRINDINDI SHIRE COUNCIL

was hereunto affixed this.....day of.....2022 in the
presence of:-

.....

COUNCILLOR

.....

Print Name

.....

COUNCILLOR

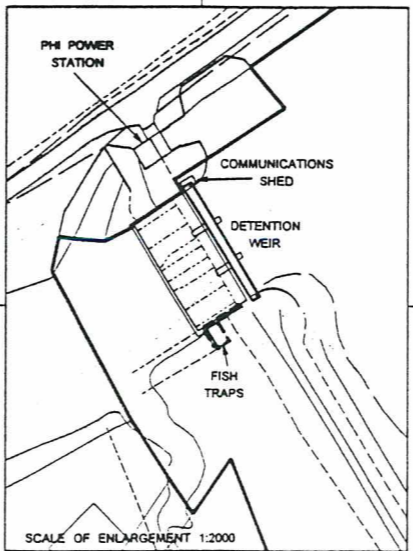
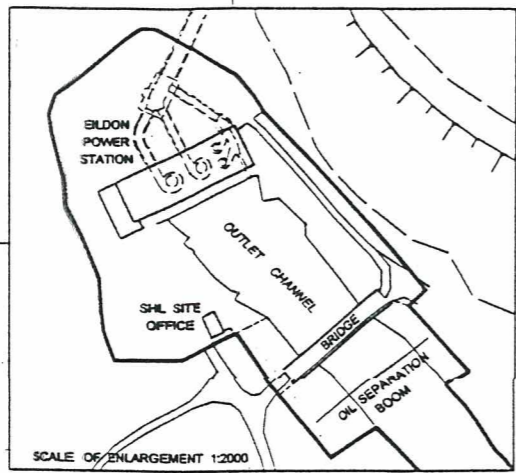
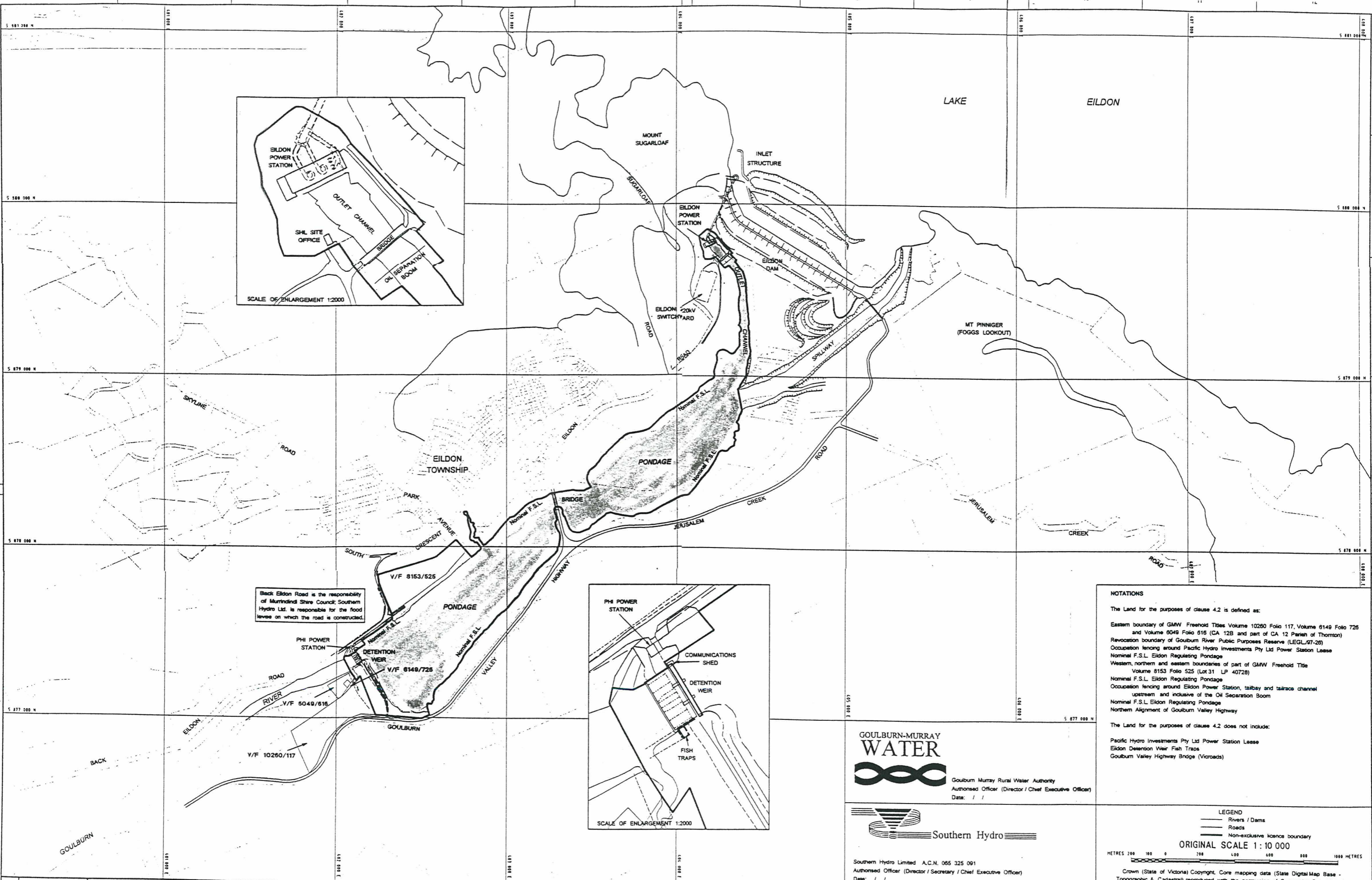
.....

Print Name

.....

CHIEF EXECUTIVE OFFICER

Annexure A



Back Eildon Road is the responsibility of Murrumbidgee Shire Council; Southern Hydro Ltd. is responsible for the flood levees on which the road is constructed.

NOTATIONS

The Land for the purposes of clause 4.2 is defined as:

- Eastern boundary of GMW Freehold Titles Volume 10260 Folio 117, Volume 6149 Folio 726 and Volume 6049 Folio 616 (CA 12B and part of CA 12 Parish of Thomson)
- Revocation boundary of Goulburn River Public Purposes Reserve (LEGL/97-26)
- Occupation fencing around Pacific Hydro Investments Pty Ltd Power Station Lease
- Nominal F.S.L. Eildon Regulating Pondage
- Western, northern and eastern boundaries of part of GMW Freehold Title Volume 8153 Folio 525 (Lot 31 LP 40728)
- Nominal F.S.L. Eildon Regulating Pondage
- Occupation fencing around Eildon Power Station, tailrace and tailrace channel upstream and inclusive of the Oil Separation Boom
- Nominal F.S.L. Eildon Regulating Pondage
- Northern Alignment of Goulburn Valley Highway

The Land for the purposes of clause 4.2 does not include:

- Pacific Hydro Investments Pty Ltd Power Station Lease
- Eildon Detention Weir Fish Traps
- Goulburn Valley Highway Bridge (Vicroads)

GOULBURN-MURRAY WATER

Goulburn Murray Rural Water Authority
 Authorised Officer (Director / Chief Executive Officer)
 Date: / /

Southern Hydro

Southern Hydro Limited A.C.N. 065 325 091
 Authorised Officer (Director / Secretary / Chief Executive Officer)
 Date: / /

LEGEND

- Rivers / Dams
- Roads
- Non-exclusive licence boundary

ORIGINAL SCALE 1 : 10 000

Metres 200 100 0 200 400 600 800 1000 METRES

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REFERENCE	REVISION	DATE	DESCRIPTION

DATE	DESCRIPTION	BY	CHECKED
21-11-97	A	LKENKE	BOUNDARY & NOTATIONS AMENDED

FISHER STEWART
 PTY. LTD. A.C.N. 007 015 965
TRARALGON OFFICE
 18 BREED STREET
 TRARALGON
 P.O. BOX 837
 VICTORIA 3844
 TEL : 03 51740008
 FAX : 03 51740008
 AUSDOC : DX 84434

Scale 1:10000 Drg No LREU005A Sheet of Proj No 2093

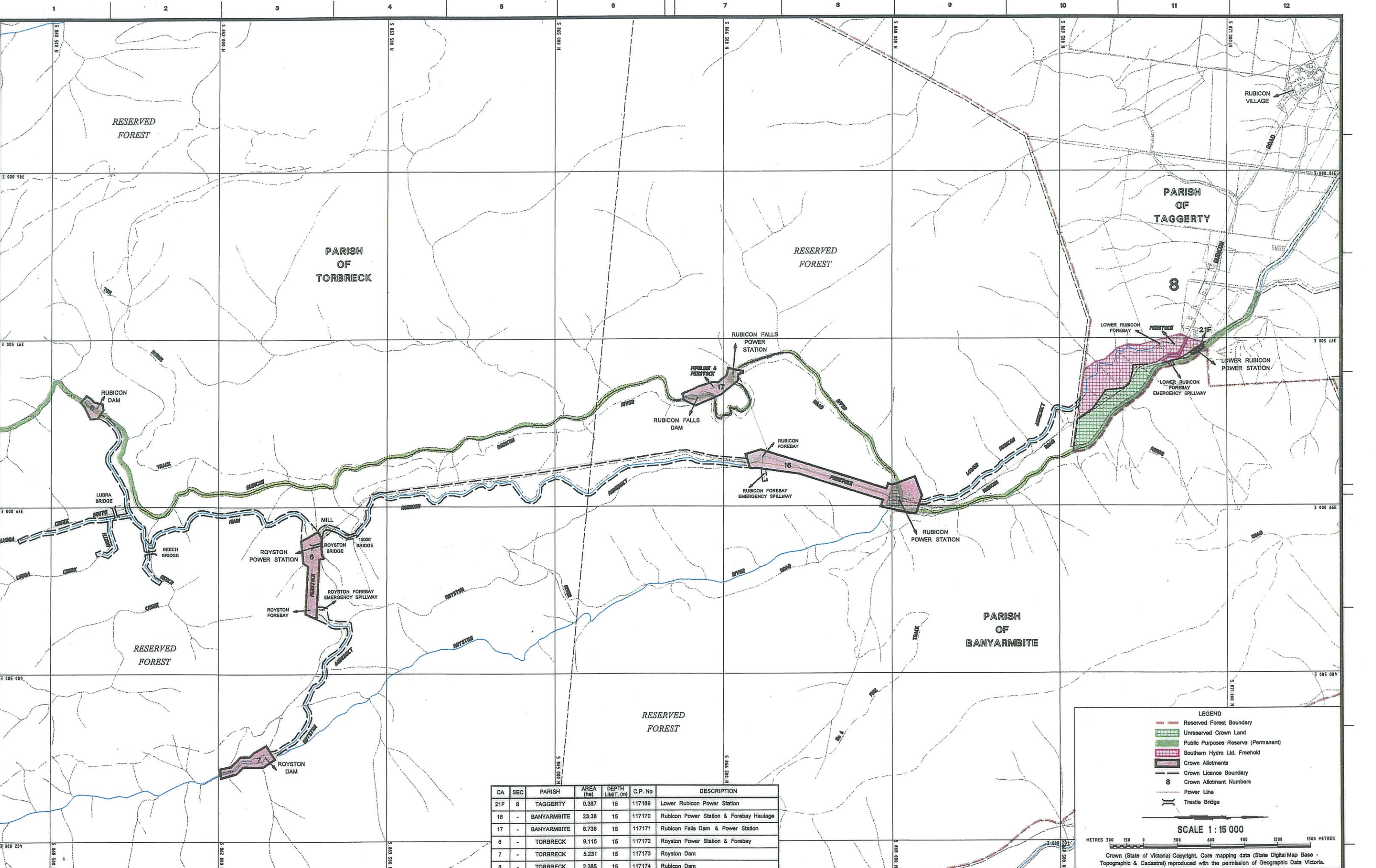
PREPARED S.GREGORY
 CHECKED B.C.HAPNER
 DATE 18-11-97

APPROVED B.C.HAPNER
Brian C. Hapner
 AUTHORIZED FOR ISSUE

STATE ELECTRICITY COMMISSION OF VICTORIA

EILDON AGREEMENT
 SOUTHERN HYDRO LIMITED AND
 GOULBURN - MURRAY RURAL WATER AUTHORITY
 ANNEXURE 1
 IDENTIFICATION OF LAND

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CA	SEC	PARISH	AREA (ha)	DEPTH LIMIT (m)	C.P. No	DESCRIPTION
21F	8	TAGGERTY	0.387	15	117189	Lower Rubicon Power Station
18	-	BANYARBITE	23.38	15	117170	Rubicon Power Station & Forebay Haulage
17	-	BANYARBITE	6.738	15	117171	Rubicon Falls Dam & Power Station
8	-	TORBRECK	9.115	15	117172	Royston Power Station & Forebay
7	-	TORBRECK	5.231	15	117173	Royston Dam
8	-	TORBRECK	2.385	15	117174	Rubicon Dam

LEGEND

- Reserved Forest Boundary
- Unreserved Crown Land
- Public Purposes Reserve (Permanent)
- Southern Hydro Ltd. Freehold
- Crown Allotments
- Crown Licence Boundary
- Crown Allotment Numbers
- Power Line
- Trestle Bridge

SCALE 1 : 15 000

0 300 600 900 1200 1500 METRES

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REVISION	NO.	DATE	DESCRIPTION	BY	CHECKED
2-4-'97	D		LICENCE BOUNDARY WEIGHT AMENDED	SCG	BCN
19-3-'97	C		LOGGING BUFFER REMOVED	SCG	BCN
5-3-'97	B		GENERAL REVISION	SCG	BCN
10-12-'96	A		CROWN LICENCE BOUNDARIES AMENDED AND LOGGING BUFFER ADDED	SCG	BCN

FISHER STEWART PTY. LTD.
 A.C.N. 007 015 965
 - Engineers - Surveyors - Town Planners -
 - Environmental Consultants -
 18 Broad Street, Traralgon 3844, P.O. Box 837
 Tel: (051) 740066, Fax: (051) 740088
 Offices also at Alice Springs, Bairnsdale,
 Brisbane, Canberra, Echuca, Geelong,
 Hamilton, Melbourne and Shepparton.

Fisher Stewart

PREPARED: S.GREGORY
 CHECKED: B.C.NAPIER
 DATE: 6-7-96
 APPROVED: B.C.NAPIER
 AUTHORIZED FOR ISSUE: *Brian Napier*

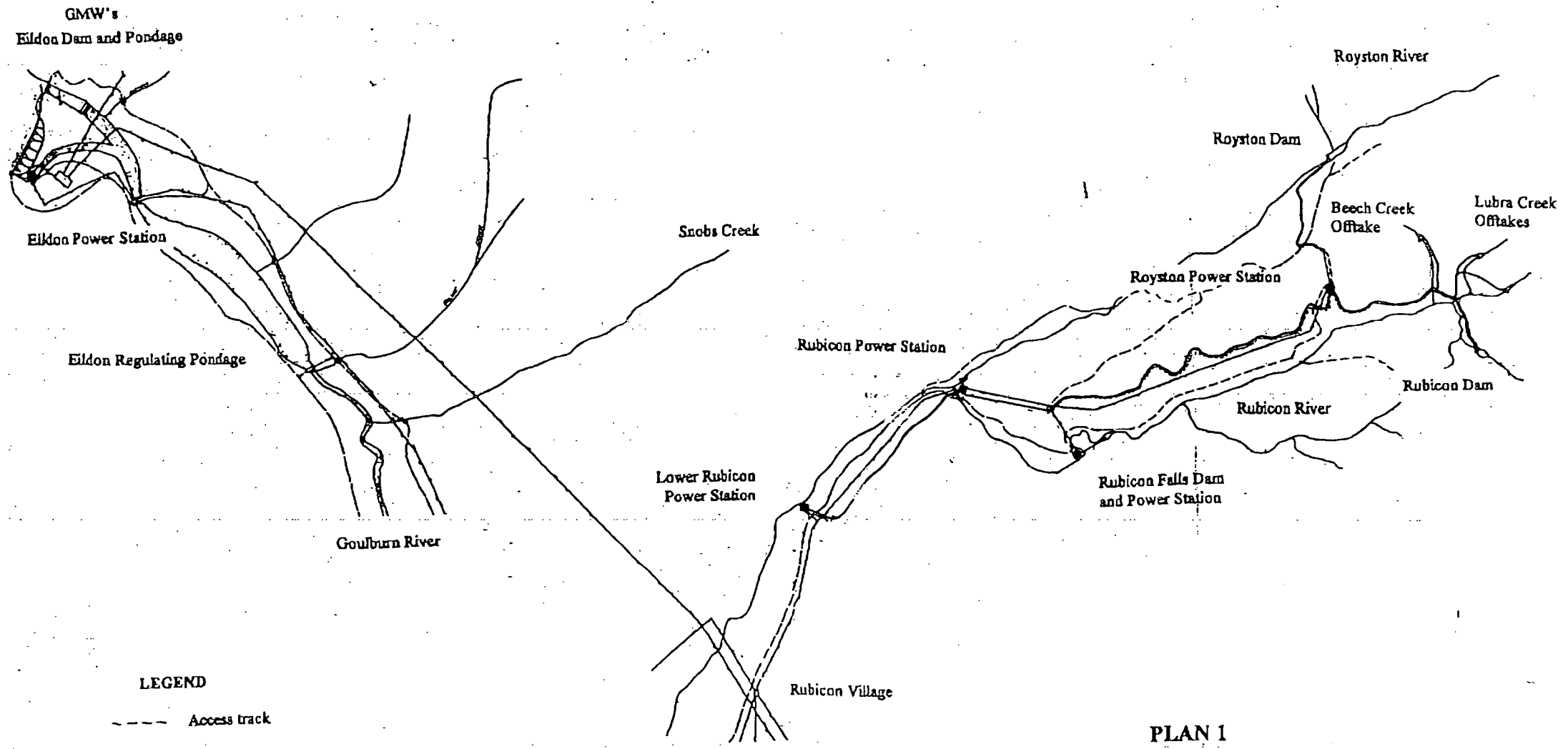
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APPROVED (S.E.C. Vic.)

STATE ELECTRICITY COMMISSION OF VICTORIA

RUBICON HYDRO SCHEME
 SOUTHERN HYDRO LTD. CROWN LEASES
 CROWN ALLOTMENTS
 PARISHES OF TAGGERTY, BANYARBITE AND TORBRECK

Drg No LRRTO02D
 Sheet of Project No 2093



PLAN 1

**SOUTHERN HYDRO LIMITED
RUBICON HYDROELECTRIC SCHEME
AND EILDON POWER STATION ASSETS**

Annexure B

Electricity Industry Act 2000**ORDER UNDER SECTION 94**

Order in Council

The Governor in Council, acting under section 94(6A) of the **Electricity Industry Act 2000** (the 'Act') makes the following Order:

1. Objective

The objective of this Order is to prescribe a methodology for determining amounts payable under section 94(5) of the Act by a generation company, an associated entity of a generation company or an exempt generator to a relevant council in respect of land used for generation functions.

2. Commencement

This Order commences on the date on which it is published in the Government Gazette.

3. Revocation

The existing Order under section 94, made under section 94(6A) of the Act and published in Victoria Government Gazette G 34 on 25 August 2005, is revoked.

4. Prescribed methodology

(1) Subject to paragraphs 4(2) and (3), for the purposes of section 94(6A) of the Act, the prescribed methodology for determining amounts required to be paid under section 94(5) of the Act by a generation company to a relevant council in respect of land used for generation functions is the methodology set out in paragraph 5.

(2) If—

(a) the total nameplate capacity of all generating units comprising the power station is 25 MW or lower; and

(b) the fuel source for electricity produced is solar, wind, or a combination of both, the prescribed methodology for determining amounts required to be paid under section 94(5) of the Act by a generation company to a relevant council in respect of land used for generation functions is the methodology set out in paragraph 6.

(3) Where the land used for generation functions lies within more than one municipal district, the amount determined in accordance with either paragraph 5 or 6 is payable to more than one relevant council and payments must be apportioned between each relevant council, having regard to the proportion of the nameplate rating of the power station located in each municipal district.

5. Prescribed methodology for electricity generators

(1) Subject to paragraphs 5(2) and (3), the generation company must pay to the relevant council in respect of that financial year:

(a) for each power station of the generation company located on the land used for generation functions and within the municipal district of the relevant council, \$54,400, as escalated; and

(b) for each MW of the nameplate rating for each generating unit comprising the power station, \$1,225, as escalated; or

(2) Where, in any financial year, the power station operates at an average capacity factor of:

(a) less than 10%, the amount otherwise payable under paragraph 5(1)(a), must be reduced by 50%;

(b) between 10% and 20%, the amount otherwise payable under paragraph 5(1)(a), must be reduced by 25%;

- (3) The amount otherwise payable under paragraphs 5(1)(a) and (b) may be further increased or decreased with the parties' agreement, having regard to other factors presented by the parties and which the arbitrator considers relevant, which may include:
- (a) the age of the power station, where this may be shown to have a demonstrated effect on the efficiency of the output of the power station; and
 - (b) the impact of the generation company or associated entity on the local area;
- (4) The generation company or associated entity may initially pay the amounts under paragraph 5(1), where paragraph 5(2) is applied using an estimate of the average capacity factor of the power station for the financial year.
- (5) If an amount has been paid under paragraph 5(4) but a subsequent calculation of the amounts in paragraph 5(1), using the actual average capacity factor of the power station for that year for the purposes of paragraph 5(2), results in an amount that:
- (a) is more than any amount initially paid under paragraph 5(4), the generation company or associated entity must pay the difference between the amounts to the relevant council; or
 - (b) is less than any amount initially paid under paragraph 5(4), the relevant council must pay the difference between the amounts to the generation company or associated entity.

6. Prescribed methodology for solar/wind generators with nameplate capacity of 25 MW or lower

- (1) Subject to paragraphs 6(1), (2) and (3), the generation company must pay to the relevant council in respect of each financial year an amount calculated in accordance with the following formula:

$$A_n = (E \times R_n) + (D \times R_{n-1})$$

Where –

A_n is the amount payable to the relevant council under section 94(5) of the Act by a generation company for the current financial year n , expressed in dollars;

E is an estimate of the amount of electricity anticipated to be generated by the facility for the current financial year n , expressed in MWh;

R_n is the following amount, expressed in dollars and as escalated, for the current financial year n ;

- a) \$0.56, in the case of a Community Generator;
- b) \$1.12 in any other case;

D is the difference between the estimated and actual generation for the facility for the previous financial year $n-1$, calculated in accordance with the following formula* –

$$D = G_{n-1} - E_{n-1}$$

Where –

G_{n-1} is the actual amount of electricity generated by the facility for the previous financial year $n-1$, expressed in MWh;

E_{n-1} is the estimate of the amount of electricity anticipated to be generated by the facility for the previous financial year $n-1$, expressed in MWh;

* for the avoidance of doubt, D may be a positive or negative value;

R_{n-1} is the amount for R_n for the previous financial year $n-1$.

- (2) If the amount A_n calculated in accordance with the formula in paragraph 6(1) for a Community Generator is less than \$5,000, then the amount payable under section 94(5) of the Act by the generation company to the relevant council is \$5,000.

- (3) If the amount A_n calculated in accordance with the formula in paragraph 6(1) for a generation company that is not a Community Generator is less than \$7,500, then the amount payable under section 94(5) of the Act by the generation company to the relevant council is \$7,500.

7. Definitions and Interpretation

- a) In this Order:

‘Community Generator’ means a generation company –

- 1) for which at least 20% of the persons that have a shareholding interest in the power station are an organisation established for community service purposes (except political purposes); and
- 2) that undertakes community service activities within the municipal district of the relevant council and distributes at least 20% in revenue from the sale of electricity generated by the power station towards such activities (except lobbying and political activities).

‘generation company’ includes an associated entity of a generation company or an exempt generator;

‘nameplate rating’ means the maximum continuous output of a generating unit, expressed in MW; and

‘power station’ means:

- 1) where the fuel source for electricity produced is coal or gas, a generating unit or group of generating units connected to a common connection point;
- 2) where the fuel source for electricity produced is solar, water or wind, a generating unit or group of generating units connected to one or more connection points, but forming part of the same scheme, as determined by the arbitrator, having regard to the scheme ownership structure, relevant planning approvals and environment effects statements.

- b) A reference to ‘as escalated’ in this Order is to be read as if it means ‘as adjusted in accordance with the following formula:

$$A_2 = A_1 * (CPI_2 / CPI_1)$$

Where:

A_2 = the adjusted amount;

A_1 = the amount to be adjusted;

CPI_2 = the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics (ABS) for the March quarter immediately preceding the beginning of the relevant financial year;

CPI_1 = the Consumer Price Index: all Groups Index for Melbourne as published by the ABS for the June 2018 quarter.’

- c) A reference to ‘average capacity factor’ in this Order means the percentage figure determined in accordance with the following:

$$ACF = (SOG / NR * 8760) * 100$$

Where:

ACF = average capacity factor for a financial year;

SOG = unless otherwise agreed between the generation company and relevant council, the sent out generation for a power station being, the total amount of electricity supplied by all generating units to the transmission or distribution network for a financial year, measured at its connection point or points, in MWh;

NR = the total nameplate rating for all generating units comprising the power station.

Dated 10 October 2018

Responsible Minister

LILY D'AMBROSIO

Minister for Energy, Environment and Climate Change

ANDREW ROBINSON
Clerk of the Executive Council

Annexure C

Year	A ₁ the amount to be adjusted 5(1)(a)	A ₂ the adjusted amount	A ₁ the amount to be adjusted 5(1)(b)	A ₂ the adjusted amount	CPI ₁ Melb June 2018 Qtr	CPI ₂ Melb March Qtr
2018 - 2019	\$ 54,400.00		\$ 1,225.00		113.8	
2019 - 2020		\$ 54,830.23		\$ 1,234.69		114.7
2020 - 2021		\$ 56,312.13		\$ 1,268.06		117.8
2021 - 2022		\$ 56,790.16		\$ 1,278.82		118.8
2022 - 2023		\$ 59,371.53		\$ 1,336.95		124.2