

Queensland



**GLADSTONE POWER
STATION AGREEMENT
AMENDMENT ACT 1997**

Act No. 60 of 1997

Queensland



**GLADSTONE POWER STATION
AGREEMENT AMENDMENT ACT 1997**

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SCHEDULE 2

FURTHER AGREEMENT AMENDING STATE AGREEMENT

Queensland



**Gladstone Power Station Agreement
Amendment Act 1997**

Act No. 60 of 1997

An Act to amend the *Gladstone Power Station Agreement Act 1993*

[Assented to 5 November 1997]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Gladstone Power Station Agreement Amendment Act 1997*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Act amended

3. This Act amends the *Gladstone Power Station Agreement Act 1993*.

Amendment of s 3 (Minister may make agreement substantially in form of agreement)

4. Section 3(1), ‘the Schedule’—

omit, insert—

‘Schedule 1’.

Amendment of s 5 (Amendment of State agreement)

5. Section 5(3), after ‘approved by’—

insert—

‘an Act or’.

Insertion of new s 5A

6. After section 5—

insert—

‘Approval of proposed further agreement

‘5A.(1) For section 5, approval is given for the Minister to enter into a further agreement for the State.

‘(2) The further agreement is to be in, or substantially in, the form set out in schedule 2.’.

Amendment of s 6 (Amendment of Schedule 2 to State agreement)

7.(1) Section 6, heading, ‘Schedule 2’—

omit, insert—

‘Second Schedule’.

(2) Section 6(1), ‘Schedule 2’—

omit, insert—

‘The Second Schedule’.

(3) Section 6(3), after ‘approved by’—

insert—

‘an Act or’.

Amendment of schedule (State agreement)

8. Schedule, heading, ‘**SCHEDULE**’—

omit, insert—

‘**SCHEDULE 1**’.

Insertion of new sch 2

9. After schedule 1—

insert—

‘SCHEDULE 2**‘FURTHER AGREEMENT AMENDING STATE
AGREEMENT**

section 5A

THIS AGREEMENT is made the _____ day of _____ 1997.

BETWEEN:

1. THE HONOURABLE DOUGLAS SLACK, MINISTER FOR ECONOMIC DEVELOPMENT AND TRADE OF THE STATE OF QUEENSLAND, FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF QUEENSLAND (“the State”);

2. GPS POWER PTY. LIMITED (ACN 009 103 422) of 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000

GPS ENERGY PTY LIMITED (ACN 063 207 456) of 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000

SUNSHINE STATE POWER B.V. (ARBN 062 295 425) of C/- Goudsmit & Branbergen, Advocaten, JJ Viottastraat 46 Postbus 75458, 1070 AL Amsterdam

SUNSHINE STATE POWER (NO. 2) B.V. (ARBN 063 382 829) of C/- Goudsmit & Branbergen, Advocaten, JJ Viottastraat 46 Postbus 75458, 1070 AL Amsterdam

SLMA. GPS PTY LTD (ACN 063 779 028) of C/- KPMG, Level 30, Central Plaza I, 345 Queen Street, Brisbane, Queensland, 4000

RYOWA II GPS PTY. LIMITED (ACN 063 780 058) of Suite 2207, Riverside Centre, 123 Eagle Street, Brisbane, Queensland, 4000

YKK GPS (QUEENSLAND) PTY LIMITED (ACN 062 905 275) of 127 Hyde Road, Yeronga, Brisbane, Queensland, 4104

(the “**Participants**” and each a “**Participant**”);

AND:

3. NRG GLADSTONE OPERATING SERVICES PTY LTD (ACN 061 519 275) of Gladstone Power Station, Hanson Road, Gladstone, Queensland, 4680 (the “**Operator**”).

RECITALS—

- A.** By agreement dated 30 March 1994 (as amended by agreement dated 23 December 1994) between the State, the Participants and the Operator made under section 3 of the *Gladstone Power Station Agreement Act 1993* the State provided certain undertakings and assurances relating to the acquisition by the Participants and future operation by the Participants and the Operator of the Gladstone Power Station (“the State agreement”).
- B.** The *Electricity Amendment Act (No. 2) 1997* amended the *Electricity Act 1994* to enable the establishment of an interim competitive wholesale electricity market in Queensland to facilitate the Queensland electricity industry’s transition to the National Electricity Market arrangements that are scheduled to commence in Queensland, New South Wales, Victoria, the Australian Capital Territory and South Australia, on 29 March 1998. Under the *Electricity—National Scheme (Queensland) Act 1997* the National Electricity (Queensland) Law will implement the regulatory arrangements for the National Electricity Market.
- C.** Section 287A of the *Electricity Act 1994* provides that the application of that Act may be changed under the State agreement or a further agreement under the *Gladstone Power Station Agreement Act 1993*.
- D.** Under section 5 of the *Gladstone Power Station Agreement Act 1993* the State agreement may be amended by a further agreement between the Minister responsible for the administration of that Act and the other parties to the State agreement.

- E. The parties have entered into this further agreement made pursuant to section 5 of the *Gladstone Power Station Agreement Act 1993*.

IT IS AGREED—

PART I—PRELIMINARY

1. Definitions

- (a) All words, terms and expressions which have a defined meaning in the State agreement have the same respective meanings when used in this agreement, unless and except as otherwise provided in this agreement.
- (b) In this agreement, unless the context otherwise requires or indicates—

“**Effective Date**” means the time immediately after the commencement of provisions about the maintenance of security of supply to sensitive loads in the Market Code approved under section 92F of the Electricity Act.

2. Interpretation

Clause 2 of the State agreement is incorporated into this agreement as if set out in full in this agreement except that the reference to “this Agreement” in Clause 2 of the State agreement shall be a reference to “this agreement”.

3. Amendment of State agreement

This agreement is made under section 5 of the Agreement Act and amends the State agreement.

4. Commencement

- (a) Parts I and II of this agreement take effect on the date of this agreement.
- (b) Part III of this agreement takes effect on the Effective Date.

5. Agreement to have force of law

The parties acknowledge that under section 4 of the Agreement Act the State agreement as amended by the provisions of this agreement has effect as if it were part of the Agreement Act.

6. No Waiver

The entering into this agreement by a party does not constitute a waiver of its rights and obligations under the State agreement which have accrued prior to the date of this agreement.

PART II—AMENDMENTS**7. The State agreement is amended as follows—****(a) Amendment of Clause 1 (Definitions)**

In Clause 1—

after the definition of “**Capacity Purchase Agreement**” insert—

“**Code**” means—

- (a) the Market Code under the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) the Code under the National Electricity (Queensland) Law after its commencement under the *Electricity—National Scheme (Queensland) Act 1997*;

(ii) after the definition of “**Queensland Railways**” insert—

“**Queensland System Operator**”—

- (a) has the meaning given in the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) thereafter means the person from time to time appointed as System Operator under the Code for Queensland.

(iii) *omit* the definition of “**system control**” and *insert*—

‘**“system control”** means—

- (a) scheduling and directing the output of the generators and other sources of supply connected to the power system; or
- (b) coordinating maintenance programs and schedules for generating and transmission plant; or
- (c) ensuring the integrity of the power system;
- (d) controlling switching of transmission elements and access to them for maintenance, inspection and testing; or
- (e) controlling the switching of parts of supply networks relevant to the integrity of the power system; or
- (f) coordinating arrangements, and issuing directions, for the reduction of demand by distribution entities or retail entities in emergencies when available electricity is limited; or
- (g) scheduling and directing the provision of ancillary services; or
- (h) shedding or restoring customer load,

and any words or expressions used in this definition of “**system control**” which have a defined meaning in the Electricity Act have the same meaning where used in this definition of “**system control**”.’; and

(iv) *omit* the definition of “**system control entity**” and *insert*—

‘**“system control entity”** means the Queensland System Operator.’.

(b) Deletion of Clauses 16B and 16F

Omit Clause 16B and *omit* Clause 16F.

(c) Amendment of Clause 16G

(i) *Omit* paragraph (a) of Clause 16G and *insert*—

- ‘(a) despite section 301 of the Electricity Act, the Minister for Energy may not fix the prices that QTSC must charge for the electricity

that it sells or the services that it provides under the Interconnection and Power Pooling Agreement; and’.

(ii) In paragraph (b) of Clause 16G before ‘section 264’ *insert* ‘section 92N or’.

(d) Amendment of Clause 16H

Omit Clause 16H and *insert*—

‘16H. System Control

Subject to the other provisions of this agreement the Queensland System Operator may not give, except in accordance with the Code, a direction under section 92B of the Electricity Act about system control which would prevent QTSC from complying with its obligations under Clause 7 of the Interconnection and Power Pooling Agreement.’.

(e) Amendment of Clause 16I

Omit Clause 16I and *insert*—

‘16I. Removal of Immunity for Certain Breaches of Interconnection and Power Pooling Agreement

- (a) If as a result of a State Electricity Entity, the Queensland System Operator or NEMMCO complying with—
- (i) a provision of the Code or the Queensland Grid Code (as defined in the Electricity Act) about system control;
 - (ii) a condition about system control imposed under the Electricity Act on the State Electricity Entity or the Queensland System Operator;
 - (iii) a direction about system control from NEMMCO or the Queensland System Operator; or
 - (iv) a direction about system control given under section 299 of the Electricity Act,

QTSC is prevented or impaired from complying with any of its obligations under the Interconnection and Power Pooling Agreement QTSC shall not be entitled to claim that the obligation

to comply with the Code or the direction is a lawful excuse for any default by QTSC of the Interconnection and Power Pooling Agreement that may arise from or be caused by compliance by the State Electricity Entity, NEMMCO or the Queensland System Operator with the Code or the direction.

- (b) All words and expressions which have a defined meaning in the Code have the same meanings where used in Clause 16I(a) unless the context otherwise requires or indicates.’.

PART III—AMENDMENTS

8. The State agreement is amended as follows—

Insertion of Clause 16J

After Clause 16I *insert*—

‘16J. Queensland Sensitive Load Schedule

- (a) The State must—
- (i) place and retain the load of the Smelter on the schedule of sensitive load under the Code for Queensland with priority specified on the basis set out in Clauses 7.4(b)(iv) and (v) and Clause 7.5 of the Interconnection and Power Pooling Agreement;
 - (ii) specify under clause 4.3.5(c) of the Code that automatic disconnection of the load of the Smelter under clause 4.3.5(a) of the Code shall not occur until the power system frequency falls to 47.0 Hz and, in accordance with its obligations under clause 4.3.5(c) of the Code, replace the load of the Smelter (or part thereof), which would otherwise have been part of a block of interruptible load in an under-frequency band specified in clause 4.3.5(b) of the Code, in that band with an equivalent amount of interruptible load nominated by other Market Customers in Queensland;

- (iii) use its best endeavours to procure NEMMCO to agree under clause 4.3.5(c) of the Code to the power system frequency of 47.0 Hz so nominated by the State for automatic disconnection of the load of the Smelter; and
 - (iv) ensure that this schedule is provided to NEMMCO by the date of commencement of the Code, and that all updates of it are provided to NEMMCO.
- (b) All words and expressions which have a defined meaning in the Code have the same meanings where used in Clause 16J(a) unless the context otherwise requires or indicates.’.

EXECUTED BY THE PARTIES AS AN AGREEMENT.

SIGNED by **THE HONOURABLE DOUGLAS**)
SLACK, MINISTER FOR ECONOMIC)
DEVELOPMENT AND TRADE OF THE)
STATE OF QUEENSLAND, FOR AND ON)
BEHALF OF THE CROWN IN RIGHT OF THE)
STATE OF QUEENSLAND)

in the presence of:

Witness

SIGNED for and on behalf of)
GPS POWER PTY. LIMITED)
(ACN 009 103 422) by)
))
its duly constituted attorney)
in the presence of:

Witness

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GPS ENERGY PTY LIMITED)
(ACN 063 207 456) by)
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SERVICES PTY LTD (ACN 061 519 275) by)
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its duly constituted attorney)
in the presence of:)

Witness'.