

Queensland



Subordinate Legislation 1994 No. 440

Gladstone Power Station Agreement Act 1993

**GLADSTONE POWER STATION
AGREEMENT VARIATION REGULATION
1994**

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Short title

1. This regulation may be cited as the *Gladstone Power Station Agreement Variation Regulation 1994*.

Amendment of State agreement

2. For section 5 of the Act, the proposed further agreement in the Schedule is approved.

SCHEDULE**FURTHER AGREEMENT**

section 2

THIS AGREEMENT is made the day of 1994

BETWEEN:

1. **THE HONOURABLE WAYNE KEITH GOSS, PREMIER AND MINISTER FOR ECONOMIC AND TRADE DEVELOPMENT 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 Peat Marwick, 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 between the parties 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 in the context of the Electricity Act 1976 (“the State agreement”).
- B.** The Electricity Act 1976 will be repealed and replaced by the Electricity Act 1994. The Electricity Act 1994 will commence on a day to be fixed by proclamation other than for section 287 which commenced on [].
- C.** Section 287(2) of the Electricity Act 1994 provides that the State will negotiate with the Participants to amend the State agreement, to take effect immediately after the commencement of the Electricity Act 1994, so as to as nearly as possible maintain the rights and obligations had, immediately before the commencement of the Electricity Act 1994, by the State, the parties to the State agreement and the parties to the Transaction Documents mentioned in the State agreement.
- D.** Section 287(9) of the Electricity Act 1994 provides that the

application of that Act may be changed, amongst other things, by the State agreement, to give effect to subsections (1) to (4) of that section.

- E. 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.
- F. The parties to the State agreement have negotiated and agreed on amendments to the State agreement in accordance with section 287(2) of the Electricity Act 1994 and for this purpose 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

Definitions

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.

In this agreement, unless the context otherwise requires or indicates:—

“**Effective Date**” means the time immediately after the commencement of the provisions of the Electricity Act 1994 other than section 287.

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”.

Amendment of State agreement

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

Commencement

Part I of this agreement takes effect on the date of this agreement.

Parts II and III of this agreement take effect on the Effective Date.

Agreement to have force of law

The parties acknowledge that under section 4 of the Agreement Act the provisions of this agreement have effect as if this agreement were part of the Agreement Act.

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 Effective Date.

PART II – AMENDMENTS TO EXISTING PROVISIONS OF STATE AGREEMENT

The State agreement is amended as follows-

in Clause 1 -

omit the definition of “Electricity Act” and insert -

‘ “Electricity Act” means the Electricity Act 1994;’

after the definition of “Electricity Act” insert -

‘ “electricity entity” has the same meaning as in the Electricity Act;’

after the definition of “Gladstone Power Station” insert -

‘ “GOC” has the same meaning as in the Government Owned Corporations Act 1993;’;

omit the definition of “GPS Licence” and insert -

‘ “GPS Licence” means the licence dated 30 March 1994 granted to the GPS Licensee under section 13 of the Agreement Act;’

after the definition of “QEC” insert -

‘ “QETC” means Queensland Electricity Transmission Corporation and its successors and assigns;’;

after the definition of “QETC” insert -

‘ “QGC” means Queensland Generation Corporation and its successors and assigns;’;

after the definition of “QGC” insert -

‘ “QTSC” means Queensland Transmission and Supply Corporation and its successors and assigns;’;

after the definition of “Refurbishment Works” insert -

‘ “Regulator” has the same meaning as in the Electricity Act;’

after the definition of “Smelter Expansion” insert -

‘ “Smelter Power Purchase Agreements” has the same meaning as in the Interconnection and Power Pooling Agreement;’

after the definition of “State Body” insert -

‘ “State Electricity Entities” means QETC, QGC and QTSC and “State Electricity Entity” means any one of them;’;

in the definition of “statutory body” insert after “public purpose” -

‘ and includes a GOC and a subsidiary of a GOC;’;

after the definition of “statutory body” insert -

‘ “system control” has the same meaning as in the Electricity Act;’;

after the definition of “system control” insert -

‘ “system control entity” has the same meaning as in the Electricity Act;’;

omit Clause 8 and insert -

‘8. Electricity Restrictions and Rationing

- (a) The Minister for Energy will not make an emergency rationing order under the Electricity Act regulating the supply of electricity to the Smelter or the use of electricity by the Smelter; and
- (b) the State will not permit the making of a regulation under section 122 of the Electricity Act restricting the use of electricity provided through a transmission grid or supply network,

if the order or regulation would prevent QTSC from complying with its obligations under Clause 7 of the Interconnection and Power Pooling Agreement.’;

in clause 11(e) omit -

‘even though the law does not apply to QEC because QEC represents the Crown’;

after paragraph (f) of Clause 11 insert -

- ‘(g) This Clause 11 applies despite and to the exclusion of any provision of the Electricity Act dealing with discrimination.’; and

in Clause 17(a) after ‘the First Power Agreement’ insert -

‘with QTSC substituted for QEC and with such other changes to the First Power Agreement as are necessary’.

PART III – ADDITION OF FURTHER PROVISIONS IN STATE AGREEMENT

The State Agreement is amended by the insertion of the following Clauses 16A, 16B, 16C, 16D 16E, 16F, 16G, 16H and 16I -

‘16A. GPS Licensee not an Electricity Entity

The State will not permit the making of a regulation under the Electricity Act providing that the GPS Licensee as a special approval holder under the GPS Licence is to be treated as an electricity entity -

for the purposes of section 130 of the Electricity Act; or
if, as a result, any of the following activities would or could
be regulated or restricted -

the connection of the GPS to the transmission grid
under the Interconnection and Power Pooling
Agreement;

the making available of capacity or the supply of
electricity by a Participant to QTSC under the Capacity
Purchase Agreement between that Participant and
QTSC;

the supply of electricity by the Participants to QTSC
under the Interconnection and Power Pooling
Agreement; or

the supply of electricity by the Participants to the
Smelter under the Smelter Power Purchase
Agreements.

16B. Modification of Limited Liability under Electricity Act

The application of section 97 of the Electricity Act to the obligations
of QTSC under the Interconnection and Power Pooling Agreement is
modified by inserting 'or default' after 'breach of duty' in section
97(a).

**16C. Preservation of Dispute Resolution Procedures in
Transaction Documents**

Sections 117 and 119 of the Electricity Act do not apply to a dispute
between the parties to a Transaction Document if the matter in dispute
may be referred to a dispute resolution procedure under the
Transaction Document.

16D. Regulator's Operation of Operating Works

- (a) A Notice by the Governor in Council made under section
130(2) of the Electricity Act authorising the Regulator to
take over the operation of any operating works; and
- (b) a condition imposed by the Regulator under section 131(3)
of the Electricity Act on an operator appointed by the
Regulator to operate any operating works taken over by the

Regulator,

must not make provision about or authorise any matter which would impair or prevent QTSC from complying with its obligations under the Interconnection and Power Pooling Agreement.

16E. Regulations and Conditions under Electricity Act about System Dispatch

- (a) If as a result of a State Electricity Entity or the system control entity complying with a regulation made, or a condition imposed, under the Electricity Act QTSC is prevented or impaired from complying with its obligations relating to system dispatch under Clause 6.3 of the Interconnection and Power Pooling Agreement, QTSC shall not be entitled to claim that the obligation to comply with the regulation or condition is a lawful excuse for any default by QTSC of Clause 6.3 of the Interconnection and Power Pooling Agreement that may arise from or be caused by compliance by the State Electricity Entity or the system control entity (as the case may be) with the regulation or condition.
- (b) The State will not permit the making of a regulation or the imposition of a condition under the Electricity Act which authorises or permits an act, matter or thing which would have the effect that the GPS could be dispatched by the system control entity in a manner other than in accordance with the provisions of Clause 6.3 of the Interconnection and Power Pooling Agreement unless the Minister (or the Minister's nominee) first meets with the chief executive officer of QTSC (or the chief executive's nominee) and the chief executive officer (or the chief executive's nominee) of each of the Participants.
- (c) The persons attending the meeting must attempt in good faith, and using their reasonable endeavours, to agree to such changes as may be appropriate to the dispatch of GPS (and amendments necessary to any of the Transaction Documents to accommodate the changes). If agreement cannot be reached within 60 days of the first meeting, the regulation may be made or the condition may be imposed without

prejudice to the accrued rights and liabilities of the parties to this Agreement or any of the Transaction Documents. Any negotiations by the parties pursuant to this Clause 16E will not constitute a waiver of rights of the parties to this Agreement or of the parties to the Interconnection and Power Pooling Agreement nor alter the position under paragraph (a).

- (d) The matters referred to in paragraphs (b) and (c) are not matters which will be referred to dispute resolution under Clause 24.

16F. Exclusion of Limitation on QTSC's Obligation to Supply

Section 84 of the Electricity Act does not apply to QTSC in respect of its obligations under the Interconnection and Power Pooling Agreement to supply electricity to the Participants and the Smelter.

16G. Modification of Application of Electricity Act to GPS Arrangements

The application of the Electricity Act is modified as follows -

- (a) sections 90 and 91 and any regulation made under either of those sections will not apply to electricity trading arrangements -
 - (i) between the Participants and QTSC under the Interconnection and Power Pooling Agreement;
 - (ii) between a Participant and QTSC under the Capacity Purchase Agreement between them; and
 - (iii) between the Participants and BSL under the Smelter Power Purchase Agreements;
- (b) regulations made under section 264 of the Electricity Act in respect of the matters mentioned in paragraph 1 of Schedule 2 to the Electricity Act will not apply to -
 - (i) the connection of the GPS to the transmission grid under the Interconnection and Power Pooling Agreement;
 - (ii) the making available of capacity or the supply of electricity

- by a Participant to QTSC under the Capacity Purchase Agreement between them;
- (iii) the supply of electricity by QTSC to the Participants or by the Participants to QTSC under the Interconnection and Power Pooling Agreement; and
 - (iv) the supply of electricity by the Participants to the Smelter under the Smelter Power Purchase Agreements;
- (c) a regulation made under section 93(4) of the Electricity Act will not apply to the electricity trading arrangements between QTSC and the Participants under the Interconnection and Power Pooling Agreement; and
- (d) section 94 of the Electricity Act will not apply to the provision of network services to the Participants under the Interconnection and Power Pooling Agreement in respect of -
- (i) the connection of the GPS to the transmission grid in relation to electricity supplied by the Participants to QTSC or the Smelter;
 - (ii) the transmission of electricity from the GPS to the Smelter; and
 - (iii) the connection of the Smelter to the transmission grid and the taking of electricity by the Smelter from the transmission grid.

16H. System Control

The State agrees that a system control entity will not be given powers about system control which could be exercised so as to prevent QTSC from complying with its obligations under Clause 7 of the Interconnection and Power Pooling Agreement.

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

- (a) If as a result of a State Electricity Entity or a system control entity complying with -

- (i) a protocol, standard or code about system control prescribed by a regulation made under the Electricity Act;
- (ii) a condition about system control imposed under the Electricity Act on the State Electricity Entity or the system control entity; or
- (iii) a direction about system control from the system control entity,

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 protocol, standard, code, condition or 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 or the system control entity with the protocol, standard, code, condition or direction.

EXECUTED BY THE PARTIES AS AN AGREEMENT.

**SIGNED by THE HONOURABLE WAYNE)
 KEITH GOSS, PREMIER AND MINISTER)
 FOR ECONOMIC AND TRADE)
 DEVELOPMENT 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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 in the presence of:)

Witness

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NRG GLADSTONE OPERATING)
SERVICES PTY LTD (ACN 061 519 275))
 by)
 its duly constituted attorney)
 in the presence of:)

Witness

ENDNOTES

1. Made by the Governor in Council on 15 December 1994.
2. Notified in the Gazette on 16 December 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of the Premier, Economic and Trade Development.