

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	Direct Deed for Electricity Contracts
Type of Agreement:	Deed
Year of Agreement/ Draft:	2009
Principal Author(s)	Law firm of Corrs Chambers Westgarth
Reviewed by:	Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This Direct Deed sets out rights and obligations for the Electricity Parties, Project Co. and the State in respect of the Electricity Contracts, which set out the terms and conditions on which Project Co. will connect to and use certain electricity infrastructure, and which the parties have agreed will be subject to a direct deed with the State.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This Direct Deed for Electricity Contracts was drafted by the law firm of Corrs Chambers Westgarth to be entered by and between the State (Minister for Water of the State of Victoria); the Project Co. (AquaSure Pty Ltd); the SPI PowerNet (SPI PowerNet Pty Ltd); and AEMO (Australian Energy Market Operator Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• State may delegate any of its functions, powers and rights (clause 2)• State's unfettered discretion to exercise any of its statutory functions or powers not affected (clause 3)• State not liable to an Electricity Party in respect of any reference to the State in any Electricity Contract (clause 4)• Electricity Party (<i>EP</i>) obligations: (clause 5A)<ul style="list-style-type: none">○ EPs to perform their respective obligations under the Electricity Contract to which they are a party in favor of Project Co and in accordance with the terms of the relevant Electricity Contract○ EP not liable for the same loss twice or for an amount greater than it is liable to Project Co under the Electricity Contract to which it is a party○ State may not take any action under this clause to enforce an obligation which the Project Co would not be entitled to take under the Electricity Contract• Each EP must notify the State of any Default Event (clause 6)• In a Default Event in respect of an Electricity Contract, the State may take steps to cure or remedy that Default Event; or, if it is not capable

of cure or remedy, commence and continue to perform the obligations of Project Co under an Electricity Contract (clause 7)

- **Termination/Suspension with cause:** An EP may only exercise a power to terminate, rescind or accept the repudiation by Project Co of its obligations under an Electricity Contract as a result of a Default Event if the EP is required to do so to comply with, or exercise any power under, any Law or for the protection or safety of any person or property, among other requirements (clause 7.2)
- **Termination/Suspension without Cause:** If there is no Event of Default, an EP may only terminate, rescind, accept repudiation of or suspend the performance of its obligations under an Electricity Contract if: it has power under that Electricity Contract to do so and has given the State prior notice; or if the State consents; in addition, an EP may suspend performance if it is permitted to do so in accordance with, among others, the *force majeure* provisions of the relevant Electricity Contract (clause 7.3)
- **Step-in Right:** The State may, after having given notice to Project Co and the EPs, appoint a Receiver over Project Co; itself enter into possession of any or all of Project Co's assets or shares; exercise all or any of Project Co's Powers and perform all or any of its obligations under or in relation to the Electricity Contract, as if it were Project Co, to the exclusion of Project Co; or, by notice to an EP, procure that a company (***Additional Obligor***) wholly owned by the State assumes jointly and severally with Project Co all of Project Co's rights and obligations under an Electricity Contract (clause 8.1)
- The Additional Obligor will become a party to each Electricity Contract and will be jointly and severally entitled to exercise the rights, powers and discretions expressed to be assumed by Project Co under the Electricity Contract (clause 8.3)
- Project Co must indemnify the State on demand against any Claim, Liability or Loss the State or any of its Associates suffer or incur arising out of taking any action under clause 8.2 or 8.3 (clause 8.4)
- **State's option to novate to State or to a third party:** Upon the early termination of the Project Deed or the State selecting or appointing the Electricity Operator to operate and maintain the Electricity Transmission and Connection Assets in place of Project Co, the State may seek a novation of the Electricity Contract and this document (clause 9)
- **State payments to Electricity Parties** (clause 10):
 - If Project Co does not pay any amount when it becomes due and payable to an EP under the Connection Services Agreement or Use of System Agreement – and the relevant EP has provided to the State a copy of the relevant invoice, evidence of it being delivered to Project Co together with a written notice – then the State must pay the amount to the EP and the EP will be entitled to claim the amount as a debt due and payable from the State (10.1)
 - The State may cause a clause 10.2(a) to apply, whereby the State would be obliged to pay any amount which is payable by Project Co to an EP under the relevant Electricity Contract directly to the relevant EP for and on behalf of Project Co and in accordance with the provisions of the relevant Electricity Contract (10.2)
- Dispute Resolution provisions (clause 13)

- This deed terminates if the parties agree so in writing or the Project Deed terminates. Termination does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Project Deed (clause 22)
- Deed further contains:
 - A standard form Novation Deed (Schedule 1)
 - A standard form Deed Poll (Schedule 2)
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Possible additional provisions that it might be appropriate to include: N/A

Experience Since Coming Into Force (including any amendments)/ if draft form, whether it has been applied: N/A

Tracking Number: *Ref #: Direct Deed for Electricity Contracts (August, 2009)*