

Loy Yang B Act 1992

No. 35 of 1992

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SCHEDULE 1
State Agreement

SCHEDULE 2
Loy Yang Land



Victoria

No. 35 of 1992

Loy Yang B Act 1992

[Assented to 16 June 1992]

Preamble:

It is expedient to enable the State Electricity Commission of Victoria to sell a substantial interest in the power station known as Loy Yang B near Traralgon:

For those purposes, it is intended that an Agreement be entered into by the Minister on behalf of the State:

It is expedient to authorise the entering into of the Agreement set out in Schedule 1 and to ratify and approve that Agreement:

The Parliament of Victoria therefore enacts as follows:

Loy Yang B Act 1992
Act No. 35/1992

PART 1—PRELIMINARY

1. Purpose

The purposes of this Act are to facilitate the sale by the State Electricity Commission of Victoria of a substantial interest in the Loy Yang B power station and to facilitate the Loy Yang B project and the operation of the power station.

2. Commencement

- (1) Parts 1 and 5 come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (1), this Act comes into operation on a day to be proclaimed.

3. Definitions

In this Act—

“**Commission**” means the State Electricity Commission of Victoria;

“**business or undertaking**”, in relation to the Commission, means—

- (a) the business of the erection, construction or provision of works, appliances and conveniences for the generation, acquisition, use, transmission, distribution or supply of electricity; and
- (b) buildings, works, mines, open-cuts, quarries, water, land, machinery, plant, towers, electric lines, cables and appliances used for or in connection with that business;

“**financial accommodation**” means a financial benefit or assistance to obtain a financial benefit arising from or as a result of—

- (a) a loan;

- (b) issuing, endorsing or otherwise dealing in promissory notes;
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) issuing, purchasing or otherwise dealing in securities;
- (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
- (f) any other arrangement that the Governor in Council on the recommendation of the Treasurer approves;

“guarantee” includes indemnity;

“Loy Yang land” means the land shown hatched on the plan in Schedule 2;

“participant” has the same meaning as in the State Agreement;

“power station” has the same meaning as in the State Agreement;

“project” has the same meaning as in the State Agreement;

“project area” means the land (other than the land bordered in blue) delineated on the plan lodged in the Central Plan Office and numbered LEGL/92-1;

“project agreements” has the same meaning as in the State Agreement;

“sell” includes otherwise dispose of;

“subsidiary”, in relation to the Commission, means a company of which the Commission would be the holding company within the meaning of the Corporations Law of Victoria if the Commission were a company within the meaning of that Law;

“statutory body” means a body corporate established by or under an Act for a public purpose or a body

corporate all the shares in which are owned, whether directly or indirectly, by or on behalf of a body corporate so established or the State;

“State Agreement” means the Agreement entered into by the Minister in accordance with section 5 and ratified and approved under section 6 and, if that Agreement is varied in accordance with section 9, that Agreement as varied and in force for the time being.

4. *Crown to be bound*

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—THE AGREEMENT

5. *Minister authorised to enter into Agreement*

The Minister is authorised to enter into an agreement in the form set out in Schedule 1.

6. *Ratification of Agreement*

The agreement referred to in section 5, when entered into by all parties, is ratified and approved.

7. *Implementation of Agreement*

- (1) The implementation of the State Agreement is authorised.
- (2) The Government of Victoria, the Ministers, instrumentalities of the State and all bodies created by or under an Act for a public purpose, including municipal councils, are authorised, empowered and required to do all things necessary or expedient to carry out, and give full effect to, the State Agreement.
- (3) A person must not do anything that interferes with the operation or implementation of the State Agreement or the ability of the parties to the State Agreement to exercise

rights, or discharge duties or obligations, under the State Agreement.

8. *Modification of law of Victoria*

If a provision of the State Agreement is inconsistent with a provision of the law of Victoria, the provision of the State Agreement prevails and the provision of the law of Victoria is, to the extent of the inconsistency, modified accordingly.

9. *Variation of Agreement*

- (1) The parties to the State Agreement may from time to time by agreement in writing add to, or substitute for, cancel or vary all or any of the provisions of the State Agreement.
- (2) The Minister must cause a copy of an agreement under sub-section (1) to be laid before each House of the Parliament within 6 sitting days of the House next following the making of the agreement.
- (3) An agreement under this section may be revoked wholly or in part by resolution of either House of the Parliament passed within 6 sitting days of the House after a copy of the agreement is laid before that House.
- (4) Unless the agreement is revoked under this section, an agreement under this section comes into force on the expiration of the period within which it could have been revoked.

10. *Enforcement of Agreement*

The State Agreement may be enforced only by or on behalf of the State or another party to it or a successor or assign of another party.

11. *Specific performance*

For the avoidance of doubt, it is declared that section 23 (1) of the **Crown Proceedings Act 1958** authorises the granting and enforcement of a decree of specific

performance against the Crown in respect of the obligations of the State under the State Agreement.

PART 3—IMPLEMENTATION

12. Powers of State Electricity Commission

- (1) For the purposes of this Act and the project, the Commission—
 - (a) subject to this Part, may sell all or any part of the Loy Yang land;
 - (b) may sell all or any part of a business or undertaking carried on by it on the Loy Yang land;
 - (c) may sell any personal property, whether or not situated on the Loy Yang land, associated with any business or undertaking carried on on any part of the Loy Yang land;
 - (d) may acquire any real or personal property sold under paragraph (a), (b) or (c);
 - (e) may participate directly or indirectly in the project and in particular—
 - (i) may construct any part of the power station;
 - (ii) may supply or provide goods or services to, for or in connection with the project;
 - (iii) may enter into and perform any contract or agreement for the purposes of the project, including the project agreements;
 - (f) may give a mortgage, charge or other security over any interest of the Commission in the project;
 - (g) may enter into arrangements enabling the Commission to enforce, for the benefit of persons other than the Commission, any obligations, agreements, undertakings or warranties relating to the power station, including an arrangement for the declaration of a trust in respect of any real or personal property of the Commission used for the purposes of the project.
- (2) The exercise of the powers of the Commission under sub-section (1) is subject to section 102 (2A) of the State Electricity Commission Act 1958.

- (3) The powers conferred on the Commission under this Act are in addition to the powers conferred on the Commission under any other Act.

13. *Guarantee etc. by Commission for subsidiary*

- (1) The Commission, on such terms and conditions as the Commission determines—
- (a) may execute a guarantee in favour of any person or body of persons guaranteeing the due satisfaction of amounts that become payable or of other actions required to be performed; and
 - (b) may give a covenant or undertaking to, or enter into an agreement with, any person or body of persons in respect of or relating to the performance of obligations required to be performed—

as a result of or in connection with the participation in the project by, or the provision of financial accommodation for or in connection with the project to, a company that is a subsidiary of the Commission, including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such a guarantee, covenant, undertaking or agreement.

- (2) A guarantee, covenant, undertaking or agreement under sub-section (1) is not affected by reason only that the company to which it applies ceases to be a subsidiary of the Commission, unless the terms and conditions of the guarantee, covenant, undertaking or agreement otherwise provide.

14. *Surrender and regrant of certain land*

- (1) The Commission may surrender to the Crown the land in folios of the Register Volume 4025 Folio 913 and Volume 9538 Folio 203.
- (2) The Governor in Council, on behalf of the Crown, may grant to the Commission for an estate in fee simple that part of the land surrendered under sub-section (1) that constitutes the Loy Yang land.

- (3) A grant of land under sub-section (2)—
 - (a) must be limited to a depth below the surface of 60 metres; and
 - (b) is subject to any other terms, covenants, conditions, exceptions, reservations and limitations that the Governor in Council may determine.
- (4) The Governor in Council, on behalf of the Crown, may grant to the Commission for an estate in fee simple that part of the land surrendered under sub-section (1) that does not constitute the Loy Yang land.
- (5) A grant under sub-section (4) is subject to any terms, covenants, conditions, exceptions, reservations and limitations that the Governor in Council may determine.
- (6) The **Subdivision Act 1988** does not apply to the subdivision of land in order to issue a Crown grant under this section.

15. *Disposal of interests in the Loy Yang land*

- (1) The Commission may dispose of any interest which it has in the whole or in part of the Loy Yang land on any terms and conditions that it determines.
- (2) Without limiting sub-section (1)—
 - (a) the disposal of an interest includes but is not limited to—
 - (i) the disposal of the fee simple or some lesser interest;
 - (ii) the giving of a mortgage or of any interest by way of security;
 - (b) the disposal may be for any consideration determined by the Commission;
 - (c) an interest may be disposed of to—
 - (i) any person or persons other than the Commission; or
 - (ii) the Commission and any other person or persons; or
 - (iii) a body formed by the Commission, or in the formation of which the Commission

participates in accordance with this or any other Act, whether or not together with any other person or persons.

- (3) The Subdivision Act 1988 does not apply to the disposal of any part of the Loy Yang land under this section.

16. Ancillary rights over Crown land

- (1) After consulting the Minister, the Minister administering Part VIII of the Land Act 1958 may grant to the Commission or the registered proprietor for the time being of the Loy Yang land any lease or licence over Crown land in the project area or over Crown land located between the area coloured yellow on the plan lodged in the Central Plan Office and numbered LEGL/92-1 and the rest of the project area delineated on that plan if the Minister considers that the grant will facilitate all or any of the following—
- (a) access to any part of the Loy Yang land;
 - (b) the construction, operation or maintenance of a power station on any part of the Loy Yang land;
 - (c) the transmission or supply of electricity from any power station on any part of the Loy Yang land;
 - (d) fire protection measures concerning the Loy Yang land and any improvements or plant located on the Loy Yang land;
 - (e) any works or activities related to those mentioned in paragraphs (a) to (d).
- (2) A lease or licence under this section may be granted for any period and on any terms and conditions that the Minister granting the lease or licence determines.
- (3) This section is in addition to and does not limit Part VIII of the Land Act 1958.

17. Ancillary rights over SEC land

- (1) The Commission may grant to the registered proprietor for the time being of any part of the Loy Yang land a lease, licence or easement over any land in the project

area that is vested in the Commission or over any land located between the area coloured yellow on the plan lodged in the Central Plan Office and numbered LEGL/92-1 and the rest of the project area delineated on that plan being land vested in the Commission, if the Commission considers that the grant will facilitate all or any of the following—

- (a) access to any part of the Loy Yang land;
 - (b) the construction, operation or maintenance of a power station on any part of the Loy Yang land;
 - (c) the transmission or supply of electricity from any power station on any part of the Loy Yang land;
 - (d) fire protection measures concerning the Loy Yang land and any improvements or plant located on the Loy Yang land;
 - (e) any works or activities related to those mentioned in paragraphs (a) to (d).
- (2) A lease, licence or easement under this section may be granted on any terms and conditions that the Commissioner determines.
- (3) Section 45 (3) of the **Transfer of Land Act 1958** does not apply to the creation under this section of an easement, being a right of carriageway.

18. *Effect of certain easements*

- (1) This section applies to—
- (a) the easement or right created by instrument lodged in the Office of Titles and numbered K 185593, affecting land in Folio of the Register Volume 6759 Folio 720; and
 - (b) the easement or right notified under section 88 (2) of the **Transfer of Land Act 1958** on an application lodged in the Office of Titles and numbered L 805801 H, affecting land in Folio of the Register Volume 9138 Folio 535; and
 - (c) the easement or right notified under section 88 (2) of the **Transfer of Land Act 1958** on an application lodged in the Office of Titles and numbered L

805802 E, affecting land in Folio of the Register Volume 9138 Folio 535; and

- (d) the easement or right created by instrument lodged in the Office of Titles and numbered R 756311L, affecting the land in Folio of the Register Volume 9842 Folio 383; and
 - (e) the easement or right in favour of the Commission affecting the land in Folio of the Register Volume 9205 Folio 935 and expressed as a condition in the Crown grant for that land; and
 - (f) any easement or right in favour of the Commission and recorded in the Register under the **Transfer of Land Act 1958** affecting—
 - (i) land in the Parish of Traralgon, being any part of Crown allotment 50A section A, Crown allotment 50B section A, Crown allotment 76U, Crown allotment 76W, Crown allotment 76Y, Crown allotment 76Z (formerly part of Crown allotments 76I and 76J), Crown allotment 84 section A, Crown allotment 85 section A, Crown allotment 90B section A and Crown allotment 92 section A; or
 - (ii) land in the Parish of Loy Yang, being any part of Crown allotment 7H section A.
- (2) If the Commission disposes of an interest in fee simple in any part of the Loy Yang land, then on the registration of a person as proprietor of the interest so disposed of—
- (a) that registered proprietor is, in addition to the Commission, entitled to each easement or right to which this section applies, as if the easement or right were appurtenant to the part of the Loy Yang land for which the person is registered proprietor; and
 - (b) in—
 - (i) any agreement or document creating an easement or right to which this section applies; or
 - (ii) any instrument or application under the **Transfer of Land Act 1958** notifying the

creation of an easement or right to which this section applies; or

- (iii) any Folio of the Register for land affected by an easement or right to which this section applies—

a reference to the Commission or the State Electricity Commission of Victoria has effect as if it included a reference to the registered proprietor for the time being of that part of the Loy Yang land.

- (3) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or other instrument or document, must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this section.

19. *Governor in Council may alter the terms and conditions of Crown grants*

Section 24 of the **State Electricity Commission Act 1958** applies to the terms and conditions recorded in a Folio of the Register created as a result of a Crown grant under section 14.

20. *Closure of certain roads*

- (1) The Governor in Council may, by Order published in the Government Gazette, declare that any part or parts of the project area used or formerly used or reserved for use as a road or roads, shall be closed as a road or roads.
- (2) Sections 5, 6 and 6A of the **Subordinate Legislation Act 1962** apply to and in respect of an Order made under sub-section (1) as if the Order were a statutory rule within the meaning of that Act notice of which had been published in the Government Gazette on the day on which the Order was so published.
- (3) An Order under sub-section (1) comes into force, if it is not disallowed by the Parliament, on the day fixed by notice published in the Government Gazette, being a day later than the last day on which it could have been

disallowed by the Parliament, and upon the Order coming into force—

- (a) the land to which the Order relates shall be closed as a road or roads; and
- (b) all rights, easements and privileges existing or claimed either in the public or by any body or person as incident to any express or implied grant or past dedication or supposed dedication or by user or by operation of any fiction of law shall cease; and
- (c) the land shall be deemed to be unalienated land of the Crown.

21. *Project area exempt from certain laws*

- (1) An exploration licence, mining licence or other authority must not be granted under the **Mineral Resources Development Act 1990** over any part of the project area unless the Minister administering that Act is satisfied—
 - (a) that the licence or authority is necessary to enable a person other than the Commission to supply coal for the purposes of the project; and
 - (b) that the granting of the licence or authority would not materially adversely affect the ability of a party to a project agreement to fulfil the party's obligations under the agreement.
- (2) For the purposes of the **Extractive Industries Act 1966**, land in the project area which is vested in the Commission or is Crown land is to be taken to be private land vested in the Commission.
- (3) The **Energy Consumption Levy Act 1982** does not apply to the consumption of gas in the project area for the purposes of the project.
- (4) Sections 80, 81 and 82 of the **Weights and Measures Act 1958** do not apply to the sale or supply of coal for the purposes of the project.

22. *Building Control Act 1981*

The Director of Building Control under the **Building Control Act 1981**, by notice published in the Government Gazette, may determine that a building on the Loy Yang land—

- (a) is unclassifiable; or
- (b) is exempt from the provisions of the **Building Control Act 1981** and regulations under that Act specified in the notice subject to such conditions (if any) as are so specified.

23. *Exemption from certain laws*

- (1) The Governor in Council, on the recommendation of the relevant Ministers may, by Order published in the Government Gazette, declare that the provisions of the **Electric Light and Power Act 1958** specified in the Order do not apply to a person specified in the Order who is authorised under that Act to supply electricity from the Loy Yang land.
- (2) The Minister must cause a copy of an Order under sub-section (1) to be laid before each House of the Parliament within 6 sitting days after it is made.
- (3) An Order may be revoked wholly or in part by resolution of either House of the Parliament passed within 6 sitting days of the House after the Order is laid before that House.
- (4) If a resolution of either House is passed in accordance with sub-section (3), the Order ceases to have effect, or has effect as partly revoked in accordance with the resolution, as the case requires, from the beginning of the day on which the resolution is passed.
- (5) The Minister must cause notice of the revocation to be published in the Government Gazette.
- (6) In this section—

“relevant Ministers”, in relation to an Order under sub-section (1) means the Minister administering this Act and any other Minister administering an Act

which, or a subordinate instrument under which, is or would be affected by the Order;

“subordinate instrument” has the same meaning as in section 3 of the Interpretation of Legislation Act 1984.

24. *Participating authorities for VicFin or TCV*

- (1) For the purposes of the Victorian Public Authorities Finance Act 1984, a reference in the definition of “participating authority” to a public authority constituted under the law of Victoria includes a reference to a body participating in the project—
 - (a) all the shares in which are owned by or on behalf of the State, whether directly or indirectly; and
 - (b) that is declared by the Minister administering that Act by notice published in the Government Gazette to be a public authority for the purposes of that Act.
- (2) For the purposes of the Treasury Corporation of Victoria Act 1992, a body participating in the project—
 - (a) all the shares in which are owned by or on behalf of the State, whether directly or indirectly; and
 - (b) that is declared by the Minister administering that Act by notice published in the Government Gazette to be a public authority for the purposes of that Act—

is to be taken to be such a public authority.

25. *Licences under Water Act 1989*

A licence under section 51 or 52 of the Water Act 1989 that is expressed to be issued for the purposes of the project remains in force, despite section 56 (3) of that Act, for the period specified in the licence (which may be a period longer than 15 years or an unlimited period) but may be renewed under section 58 of that Act.

26. *Planning and Environment Act 1987*

Sections 30 and 38 of the **Planning and Environment Act 1987** do not apply in relation to the Traralgon (Shire) Planning Scheme Amendment L40, notice of which was published in the Government Gazette dated 27 May 1992.

27. *Local rates*

- (1) Despite anything to the contrary in the **Local Government Act 1989** or in any other Act or law, the Loy Yang land is not rateable land.
- (2) A person who, but for sub-section (1), would be liable to pay rates in respect of the Loy Yang land or any part of it must pay to each relevant council—
 - (a) such amount or amounts as are agreed between the person and all the relevant councils, or the person and the relevant council, at such times as are so agreed; or
 - (b) if, by 31 July 1992 an agreement or agreements under paragraph (a) have not been entered into with all relevant councils, such amount or amounts as the Governor in Council determines are payable by that person to each relevant council at such times as the Governor in Council determines; or
 - (c) if, at any time after 31 July 1992, the amount required to be paid is not the subject of an agreement under paragraph (a) or a determination under paragraph (b), such amount or amounts as the Governor in Council determines are payable by that person to the relevant council at such times as the Governor in Council determines.
- (3) Section 221 of the **Local Government Act 1989** does not apply in relation to the Loy Yang land.
- (4) In this section “relevant council” means the Shire of Traralgon, the City of Traralgon and the City of Morwell.

28. *Subsidiaries of Commission to be public authorities*

- (1) If the Minister, by notice published in the Government Gazette, declares a company within the meaning of the Corporations Law of Victoria that is a subsidiary of the Commission to be a public authority constituted under this Act, the company is to be taken to be such an authority.
- (2) A subsidiary of the Commission to which a declaration under sub-section (1) applies, in addition to all its other functions and powers, may, if the Commission requests it to do so on behalf of the Commission, undertake any of the following:
 - (a) the generation of electricity;
 - (b) the acquisition of electricity;
 - (c) the transmission of electricity;
 - (d) the distribution of electricity;
 - (e) the supply of electricity.

PART 4—GENERAL

29. *Approval of certain acts and things*

- (1) For the purposes of section 51 (1) of the Trade Practices Act 1974 of the Commonwealth, as amended and in force for the time being, any act or thing—
 - (a) that is specified in sub-section (2) as an act or thing to which this section applies; and
 - (b) that, but for this section, would contravene Part IV of that Act—

is, by force of this Act, authorised and approved.

- (2) This section applies to the following acts and things:
 - (a) the entering into, or the giving of effect to a provision, of the State Agreement a project agreement, or any other agreement authorised by the State Agreement;

- (b) the establishment of any partnership, trust or joint venture for the purposes of, or connected with, the project;
- (c) the entering into, or the giving of effect to a provision of any contract, arrangement or understanding, the engaging in exclusive dealing or other conduct or the doing of any other act or thing that—
 - (i) arises out of, or is otherwise contemplated by, a provision referred to in paragraph (a); or
 - (ii) relates to the supply or acquisition of goods or services (including electricity) by or to the Commission, or by or to a participant, for the purposes of, or in connection with, the project;
- (d) any other act or thing that is, or is included in a class of acts or things, declared by the regulations to be an act or thing, or a class of acts or things, to which this section applies.

30. *Guarantee etc. by Treasurer*

- (1) The Treasurer, on behalf of the Government of Victoria, on such terms and conditions as the Treasurer determines—
 - (a) may execute a guarantee in favour of any person or body of persons guaranteeing the due satisfaction of amounts that become payable or of other actions required to be performed; and
 - (b) may give a covenant or undertaking to, or enter into an agreement with, any person or body of persons in respect of or relating to the performance of obligations required to be performed—

as a result of or in connection with the participation in the project by, or the provision of financial accommodation for or in connection with the project to—

- (c) the Commission; or
- (d) a body established by or under an Act for a public purpose; or

(e) a body all the shares in which are owned (directly or indirectly) by or on behalf of the State or the Commission—

including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such a guarantee, covenant, undertaking or agreement.

- (2) A guarantee, covenant, undertaking or agreement under sub-section (1) that applies to a body of a kind referred to in sub-section (1) (e) is not affected by reason only that the body ceases to be such a body, unless the terms and conditions of the guarantee, covenant, undertaking or agreement otherwise provide.

31. *Appropriation for guarantee etc.*

- (1) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee, covenant, undertaking or agreement executed or given under this Part on behalf of the Government of Victoria shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).
- (2) Any sums received or recovered by the Treasurer in respect of any sums paid by the Treasurer under a guarantee, covenant, undertaking or agreement executed or given under this Part shall be paid into the Consolidated Fund.

32. *Assignment and enforcement of guarantees etc.*

The whole or any part of the benefit of a guarantee, covenant, undertaking or agreement under this Part may be assigned by the person entitled to the benefit for the time being, unless the terms and conditions of the guarantee, covenant, undertaking or agreement otherwise provide.

33. *Act not to affect restructuring of electricity industry*

- (1) Nothing in this Act or the State Agreement prevents or restricts the State, an agency or instrumentality of the

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State, the Commission, another statutory body or a municipal council taking any action that constitutes or is connected with a restructuring of the Commission or the electricity industry.

- (2) A provision of an agreement that is inconsistent with sub-section (1) is void and unenforceable to the extent of the inconsistency.
- (3) Despite sub-section (2), a provision of a project agreement is not void and unenforceable by reason only of a provision that is inconsistent with sub-section (1) but which accords with principles in the contractual documents.
- (4) In this section—

“contractual documents” means the copy of the documents in 4 volumes held by the Commission entitled “Investment in Loy Yang B Project: Contracts Initialled by Mission: State Electricity Commission of Victoria: Mission Energy Company: 28 May 1992” as added to, altered or amended by an addition, alteration or amendment signed by a person authorised so to do in writing signed by the Leader of the Parliamentary Liberal Party;

“Loy Yang Property” has the same meaning as in section 35;

“restructuring” includes—

- (a) any sale, lease or other disposal of all or part of any interest in the Loy Yang property held by the Commission or another statutory body;
- (b) any sale, lease or other disposal of any interest of the Commission or any other entity in any property within the Victorian electricity industry other than the Loy Yang property;
- (c) any agreement relating to the supply of products, by-products, materials or services used or produced by, in or through the operation of any electricity generating asset other than the power station;

- (d) any agreement relating to the supply, purchase or sale of electricity from any electricity generating asset other than the power station;
- (e) the issue of a permit within the meaning of the State Agreement in respect of any electricity generating asset other than the power station;
- (f) any restructuring of the Commission including the incorporation of any part of the Commission.

34. *Freedom of Information Act 1982*

- (1) The **Freedom of Information Act 1982** does not apply to a document to the extent to which the document discloses information about—
 - (a) a financial model relating to the project provided by or on behalf of a participant to a Minister or an agency within the meaning of that Act or an authorised representative of such an agency;
 - (b) the disposition by a participant of an interest in the project;
 - (c) a penalty or compensation payment payable by or to a participant under a project agreement;
 - (d) the determination of the price of an option held by a participant under a project agreement; or
 - (e) a management report relating to the operation and financial performance of the power station prepared by or on behalf of a participant.
- (2) A participant in the joint venture within the meaning of the State Agreement must not, under the **Freedom of Information Act 1982**, disclose any information which may entail commercial confidentiality except with the agreement of all other participants.
- (3) A decision of a participant not to disclose information because of sub-section (2) is to be taken to be a decision that is subject to review in accordance with the **Freedom of Information Act 1982**.
- (4) For the purposes of section 34 of the **Freedom of Information Act 1982**—

- (a) a participant is to be deemed to be a business, commercial or financial undertaking; and
- (b) the obligations of an agency or a Minister under sub-section (3) of that section apply in respect of a participant whether or not the relevant document or documents have been supplied by the participant.

35. *Proceeds of sale*

- (1) The net proceeds must be applied as soon as practicable after receipt—
 - (a) first, to repaying, discharging or satisfying temporary purpose borrowings; and
 - (b) secondly, in repaying, discharging or satisfying other Commission debt.
- (2) The net proceeds are not payable, and shall not be required to be paid, in whole or in part, directly or indirectly, to the State for any reason whatsoever.
- (3) The Auditor-General—
 - (a) within one month after the Commission has received \$100 000 000 or more of the net proceeds; and
 - (b) within one month after the Commission has received any subsequent amount or amounts totalling \$100 000 000 or more of the net proceeds—

must prepare and sign a report as to whether there has been compliance with this section and include a summary of the reasons for the conclusions of the Auditor-General.

- (4) In respect of each year ended 30 June in which any net proceeds are received by the Commission or taken into account in relation to the global limit for the year concerned the Auditor-General must prepare and sign a report before the next succeeding 31 July as to—

- (a) whether the borrowings of the State and its emanations complied with the global limit for the year concerned; and
 - (b) whether any borrowing was treated as a refinancing and not a new money borrowing only by virtue of a repayment, discharge or satisfaction of Commission debt under this section.
- (5) In each report prepared under sub-section (4), the Auditor-General must include a finding as to whether any money actually received in one year was taken into account in relation to the global limit in any other year and, if so, identify the year concerned and the effect of such treatment.
- (6) Each report prepared and signed under sub-section (3) or (4) must be transmitted by the Auditor-General to the Legislative Assembly and to each member of the Legislative Assembly and the Legislative Council.
- (7) For the purposes of this section, any money received by or on behalf of a subsidiary of the Commission or by another person on behalf of the Commission is deemed to have been received by the Commission at the time of such receipt.
- (8) In this section—

“Commission debt” means liabilities of the Commission, whether current or non-current, but does not include any liability of the Commission to the State;

“global limit” means the global limit fixed by the Australian Loan Council applicable to borrowings by the State of Victoria and its emanations as in force from time to time;

“Loy Yang property” means—

- (a) the Loy Yang land; and
- (b) any business or undertaking carried on by the Commission on the Loy Yang land; and
- (c) any real or personal property, whether or not situated on the Loy Yang land, associated with

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any business or undertaking carried on on any part of the Loy Yang land; and

- (d) a company, joint venture, partnership, trust or other body which has an interest in any of the property referred to in paragraph (a), (b) or (c);

“net proceeds” means the total financial consideration paid or payable to the Commission as the purchase price of the Loy Yang property under the Sale of Assets Agreement within the meaning of the State Agreement, less the transaction costs;

“temporary purpose borrowings” means borrowings by or on behalf of the Commission as temporary purpose borrowings for the purposes of the global limit and made to finance the development of the Loy Yang property;

“transaction costs” means the direct costs, charges and expenses of, or in connection with, selling or leasing any interest in the Loy Yang property, incurred by the Commission on its own behalf including, without limitation—

- (a) the costs, charges and expenses of negotiating, preparing, executing and settling each project agreement; and
- (b) the costs, charges and expenses payable to any financial or legal adviser or other professional consultant appointed by the Commission; and
- (c) the reasonable overhead and other internal costs, charges and expenses of the Commission—

less the costs, charges and expenses of stamping or registering a project agreement or any other instrument executed to give effect to a requirement of a project agreement whether payable by the Commission or another person.

36. Annual report of interests

The Minister must cause to be laid before each House of the Parliament on or before 31 August in each year, or if

a House is not then sitting, within 6 sitting days of the House next following that date, a report identifying the statutory bodies that have an interest, whether direct or indirect, in the project and specifying the interest of each such body.

37. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this section may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6 (2) of the **Subordinate Legislation Act 1962**.
- (3) Disallowance under sub-section (2) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

PART 5—AMENDMENT OF STATE ELECTRICITY COMMISSION ACT 1958

38. Principal Act

In this Part, the **State Electricity Commission Act 1958** is called the Principal Act.

No. 6377.
Reprinted to
No. 48/1991
and
subsequently
amended by
No. 3/1992.

39. Functions

In section 12A of the Principal Act, for paragraph (a) substitute—

- “(a) to undertake or co-ordinate any one or more of the following:
- (i) the generation of electricity;
 - (ii) the acquisition of electricity;
 - (iii) the transmission of electricity;

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- (iv) the distribution of electricity;
- (v) the supply of electricity;
- (aa) to co-ordinate the generation of electricity by municipal undertakings or private bodies;
- (ab) to carry out the functions conferred on it by the **Loy Yang B Act 1992**;

40. *New section 12B inserted*

After section 12A of the Principal Act insert—

“12B. *Other powers of the Commission*

- (1) The Commission may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) The Commission may promote, form or participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the carrying out of its functions and powers.
- (3) The Commission may facilitate and assist any person, joint venture, partnership, trust or body to perform any act that is consistent with, or conducive to, the fulfilment of the Commission's functions.”

41. *Commission's power to purchase electricity*

In section 21 (2) of the Principal Act, for paragraph (a) substitute—

“(a) purchase electricity;”

42. *Amendment of sections 69B and 69C*

(1) After section 69B (2) of the Principal Act insert—

“(2A) The Minister must not grant an authority under sub-section (2) (d) if it would materially adversely affect the ability of a person to fulfil an obligation

to supply coal for the purposes of the power station within the meaning of the Loy Yang B Act 1992.”.

(2) After section 69C (2) of the Principal Act insert—

“(2A) The Minister must not grant a licence under sub-section (2) if it would materially adversely affect the ability of a person to fulfil an obligation to supply coal for the purposes of the power station within the meaning of the Loy Yang B Act 1992.”.

43. *Amendment of section 102*

In section 102 of the Principal Act, sub-section (1) is repealed.

44. *Title to coal*

After section 108A (2) of the Principal Act insert—

“(3) The property in coal separated from land in the Latrobe area in accordance with the powers of the Commission under this Act passes from the Crown to the Commission when the coal is so separated.”.

SCHEDULES

SCHEDULE 1

State Agreement

THIS AGREEMENT is made the
1992

BETWEEN:

The Honourable David White in his capacity as Minister for Manufacturing and Industry Development, for and on behalf of the State of Victoria (the "State"); and

State Electricity Commission of Victoria, a body corporate established by the State Electricity Commission Act 1958 ("SECV");

Loy Yang B Power Station Pty Ltd (A.C.N. 052 530 551) of Monash House, 15 William Street, Melbourne, Victoria ("LYBPS"); and Victorian Power Station Investments Pty Ltd, (A.C.N. 054 752 377) of 7th Floor, 228 Victoria Parade, East Melbourne, Victoria ("VPSI"); and Mission Energy Australia Pty Ltd (A.C.N. 055 563 785) of Level 37, 101 Collins Street, Melbourne, Victoria for and on behalf of the Latrobe Power Partnership ("LPP"), A Limited Partnership of which Mission Energy Australia Pty Ltd is a general partner.

(LYBPS, VPSI and LPP are referred to in this Agreement as the "Participants", which term includes their respective successors and permitted assigns under this Agreement).

WHEREAS:

- A. SECV is currently constructing the Power Station on its own behalf at Loy Yang near Traralgon in the State of Victoria.
- B. The Participants intend to form an unincorporated joint venture to acquire, construct, commission, test, operate, maintain and decommission the Power Station.
- C. The Participants are negotiating a number of agreements relating to or connected with the Power Station.
- D. The Participants have requested the State to provide certain undertakings and assurances relating to the Power Station.
- E. Recognising the benefits to the State from the involvement of the Participants in the completion and operation of the Power Station, the State has agreed to provide those undertakings and assurances in accordance with and subject to the terms of this Agreement.

NOW IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement unless the contrary intention appears:

"Coal Supply Agreement" means the agreement pursuant to which SECV is to maintain a capability to supply and, as requested by the Participants, is to supply brown coal from the open cut mine

SCHEDULE 1—*continued*

at Loy Yang in accordance with appropriate quantity and quality limits, for use in the Power Station, and the Participants are to pay SECV for maintaining the supply capability and for the coal used.

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof.

“Completion of Construction Agreement” means the construction agreement pursuant to which SECV, as independent contractor for the Participants, is to complete construction of the Power Station (including the first generating unit of approximately 500 megawatts scheduled for completion in the second half of calendar year 1993 and the second generating unit of approximately 500 megawatts scheduled for completion in the second half of calendar year 1996).

“Council” has the same meaning as in the Local Government Act 1989.

“Joint Venture” means the unincorporated joint venture to be formed between the Participants pursuant to the Joint Venture Agreement.

“Joint Venture Agreement” means the agreement providing for the establishment of an unincorporated joint venture for the purpose of acquiring (as tenants in common in undivided shares), operating and maintaining the Power Station, regulating the rights, interests and obligations of the Participants, providing for the establishment of a management committee to oversee the operations of the joint venture, establishing the basis upon which disputes in relation to the joint venture are to be resolved and regulating financial arrangements between the Participants in relation to the joint venture.

“Loy Yang B Act” means the Act authorising and ratifying the execution of this Agreement by the State.

“Minister” means the Minister of the State for the time being responsible for administering the Loy Yang B Act.

“Miscellaneous Services Agreement” means the agreement pursuant to which, among other things, SECV is to supply or provide certain services and supplies (including electrical energy, ash disposal, saline waste disposal, neutralised chemical waste disposal, low quality water, high quality water, gas, auxiliary fuel, drainage and sewage disposal) in connection with the operation of the Power Station and which is to establish rights of access and easements to facilitate access to and from the Power Station and adjoining land for the purposes of supplying these goods and services.

“Operating and Maintenance Agreement” means the agreement pursuant to which Mission Energy Management Australia Pty Ltd is to be appointed by the Participants to operate and maintain the Power Station on their behalf in accordance with prescribed performance standards, planned annual performance levels, and budgets and programs which have been approved by the management committee established under the Joint Venture Agreement.

“Operator” means the operator appointed under the Operating and Maintenance Agreement.

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SCHEDULE 1—*continued*

- “**Permit**” includes a permit, licence, consent, approval, exemption, permission or other authorisation.
- “**Power Station**” means the coal fired power station of approximately 1000 megawatts at Loy Yang near Traralgon and known as Loy Yang B and related facilities.
- “**Power Supply Agreement**” means the agreement pursuant to which the Participants will maintain a capability to supply electricity from the Power Station to SECV, and the Participants will supply electricity to SECV as it requires, and SECV will pay to the Participants a capability charge referable to the capability to supply maintained by the Participants and an energy charge referable to electricity supplied by the Participants to SECV.
- “**Project**” means the acquisition, construction, commissioning, testing, operation, maintenance and decommissioning of the Power Station and the sale and supply of electricity in accordance with the Project Agreements and all ancillary or related activities.
- “**Project Agreements**” means the Joint Venture Agreement, Operating and Maintenance Agreement, Sale of Assets Agreement, Completion of Construction Agreement, Power Supply Agreement, Coal Supply Agreement and Miscellaneous Services Agreement.
- “**Sale of Assets Agreement**” means the agreement pursuant to which, among other things, the Power Station (to the extent constructed), the land on which the Power Station is being constructed and various related fixtures and completed chattels will be sold by SECV to the Participants, as tenants in common in accordance with their respective shares in the joint venture, for a price specified.
- “**statutory body**” means any body constituted by or under a State or Commonwealth Act for a public purpose.
- “**taxes**” means taxes, levies, imposts, deductions, rates, charges, withholdings and duties (including, but not limited to, stamp and transaction duties), together with any related interest, penalties, fines and other charges, imposed under any Act.

1.2 Interpretation

- (a) In this Agreement unless the contrary intention appears:
- (i) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
 - (ii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iii) the singular includes the plural and vice versa;
 - (iv) one gender includes the other genders;
 - (v) the word “person” includes a firm, a body corporate, an unincorporated association or an authority; and
 - (vi) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns.

SCHEDULE 1—continued

- (b) In interpreting this Agreement, a construction that would promote the purpose or object underlying this Agreement must be preferred to a construction that would not promote that purpose or object.

1.3 Appointment of Operator

- (a) The parties acknowledge that each Participant has authorised and designated the Operator to act, or will cause the Operator to be authorised and designated to act, as its representative on its behalf for those purposes of this agreement specified in paragraph (b). A Participant is bound by any act or decision made on its behalf by the Operator within the scope of its authority as specified under or in accordance with paragraph (b). A Participant may at any time by notice to the State revoke or vary the authorisation with respect to all or any of the purposes specified under or in accordance with paragraph (b).
- (b) The purposes referred to in paragraph (a) are:
- (i) the provision of copies of documents to the Minister under Clauses 3.1 and 3.2;
 - (ii) the seeking of approvals from the Minister under Clause 5;
 - (iii) the making of requests under Clauses 4.1, 4.2, 4.3 and 4.4; and
 - (iv) any other purpose specified by notice in writing by a Participant to the Minister and each other Participant.

- 1.4 Rights and obligations of each Participant under this Agreement are several and no Participant is responsible for the obligations of any other Participant.

2. CONDITIONS PRECEDENT

- 2.1 Clauses 1, 2 and 3 take effect on the date of this Agreement.
- 2.2 Subject to Clause 2.6, the remainder of this Agreement does not come into effect until:
- (a) each of the Project Agreements, in a form acceptable to the Minister, has been executed;
 - (b) an agreement or agreements between the Participants (or the Operator on behalf of the Participants) and the union or unions whose members are to be employed at the Power Station has been executed; and
 - (c) the Minister has received confirmation in form and substance satisfactory to the Minister that financial accommodation to be obtained by the Participants (other than a Participant which is a statutory body or a Participant all of the shares in which are owned, directly or indirectly, by or on behalf of a statutory body or by or on behalf of the State) for the purposes of the Project and equity to be provided for the purposes of the Project will not be included in the State's global limit allocations by the Australian Loan Council.
- 2.3
- (a) Each party will use all reasonable endeavours to promptly obtain the fulfilment of the condition precedent described in Clause 2.2 (a).
 - (b) Each Participant will use all reasonable endeavours to promptly obtain the fulfilment of the condition precedent described in Clause 2.2 (b).
 - (c) The Minister will use all reasonable endeavours to promptly obtain the fulfilment of the condition precedent described in Clause 2.2 (c).

SCHEDULE 1—*continued*

- 2.4 If each condition in Clause 2.2 is not completely fulfilled or waived on or before 30 June 1992, or by a later date agreed to by each party before 30 June 1992, then this Agreement may be terminated by a party after the relevant date on giving 30 days written notice to each other party.
- 2.5 If this Agreement is terminated pursuant to Clause 2.4 none of the parties shall have any claim against any other of them with respect to any matter or thing arising out of, done or omitted to be done or performed under this Agreement (other than a claim arising under clause 2.3).
- 2.6 The condition precedent described in Clause 2.2 (c) may be waived in whole or in part by the Minister and any other condition precedent described in Clause 2.2 may be waived with the consent of all parties to this Agreement.

3. MINISTER'S COPIES OF AGREEMENTS AND VARIATIONS

- 3.1 Promptly after executing any Project Agreement the Participants will ensure that an accurate copy of it is given to the Minister.
- 3.2 Promptly after executing any variation to or modification or replacement of any Project Agreement the Participants will ensure that an accurate copy of the variation, modification or replacement is given to the Minister.

4. OBLIGATIONS OF THE STATE

4.1 Procurement of goods and services

If any goods or services for the purposes of the Project are required to be supplied to SECV, the Participants or the Operator by any agent or instrument of the Commonwealth or the State, statutory body or Council, the State will, if requested to do so by SECV, the Participants or by the Operator on behalf of the Participants:

- (a) make representations to the relevant agent, instrument, statutory body or Council for the supply of those goods or services; and
- (b) endeavour to procure (but without any obligation to pay for or to subsidise) the timely supply of those goods or services by the relevant agent, instrument, statutory body or Council on terms and conditions no less favourable than those which at the time apply generally to the provision of such goods or services by the relevant agent, instrument, statutory body or Council.

4.2 Grants of interests in Crown land

The State must grant or cause to be granted to SECV or the Participants at the request of or on behalf of any of them such interest in such Crown land as the Minister determines is:

- (a) necessary for the purposes of the Project; and
- (b) not required or reasonably likely to be required by the State for any purpose (including, without limitation, its sale),

on terms and conditions which are reasonable in all the circumstances.

4.3 Issue and procurement of Government permits

If any Permit is required by SECV, the Participants, the Operator or any other person from the Commonwealth or the State or any agent or instrument of the Commonwealth or the State, statutory body or Council

SCHEDULE 1—continued

for the purposes of the Project and the person requiring such Permit has made due application for the permit to be granted or to be reissued, renewed or extended (as the case may be), the State will, if requested to do so by SECV, the Participants or by the Operator on behalf of the Participants:

- (a) if the Permit is required from the State, if reasonable to do so and consistent with any requirements generally applicable to the granting, reissue, renewal or extension of such a Permit, promptly grant, reissue, renew or extend the Permit; and
- (b) if the Permit is required from the Commonwealth or an agent or instrument of the Commonwealth or the State, a statutory body or Council:
 - (i) make representations to the Commonwealth or the relevant agent, instrument, statutory body or Council for the grant, reissue, renewal or extension of the Permit; and
 - (ii) endeavour to procure (but without any obligation to pay for or to subsidise) the timely grant of the Permit by the Commonwealth or the relevant agent, instrument, statutory body or Council on terms and conditions no less favourable than those which at the time apply generally to the granting, reissue, renewal or extension of such a Permit by the Commonwealth or the relevant agent, instrument, statutory body or Council.

4.4 Representations to Commonwealth

If requested to do so by SECV, the Participants (or by the Operator on behalf of the Participants), the State will make representations to the Commonwealth with respect to the removal by the Commonwealth of any adverse effect caused by Commonwealth policies or actions or likely to be caused by proposed Commonwealth policies or actions on:

- (a) the progress or cost of construction of the Power Station;
- (b) the operation or maintenance of the Power Station;
- (c) the legal rights of, or economic benefits to, the Participants under this Agreement and the Project Agreements; or
- (d) the formation or operation of the Joint Venture.

4.5 Non-discrimination

- (a) The State will not take or continue and will not authorise or (insofar as it is competent to do so) permit any agent, instrument or statutory body of the State, or Council, to take or continue any action or combination of actions (including the imposition of any taxes or the making of any local laws) which—
 - (i) as between—
 - (A) the Power Station or the rights, benefits or obligations of any Participant in relation to the Power Station; and
 - (B) other power stations and related facilities for the generation of electricity located in the State or the rights, benefits or obligations of the proprietors of those other power stations and related facilities—is discriminatory to a material extent in respect of—
 - (C) income, titles, property or other assets;
 - (D) products, by-products, materials or services used or produced by, or through the operation of, the Power Station; or

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SCHEDULE 1—*continued*

- (E) the generation, disposal or sale of electricity produced by the Power Station;
 - (ii) modifies or reduces the rights or adds to the obligations of the Participants or the Operator under this Agreement or any Project Agreement in a way which is discriminatory; or
 - (iii) adds to the rights of the State, or of any body all the shares in which are owned (directly or indirectly) by or on behalf of the State and which is a party to a joint venture or partnership relating to the Power Station, under this Agreement or any Project Agreement in a way which is discriminatory; or
 - (iv) in the case of a local law, modifies or reduces the rights or adds to the obligations which the Participants or the Operator have at the date of this Agreement in a way which is discriminatory.
- (b) Without limitation, the matters set out below must be taken into account in determining whether taking, or continuing an action or combination of actions contravenes paragraph (a) (i), (ii) or (iii):
- (i) the purpose of the action or combination of actions; and
 - (ii) the effect or potential effect of the action or combination of actions, including:
 - (A) whether the Power Station or the rights, benefits or obligations of the Participants in relation to the Power Station is or are the only thing or things affected or potentially affected; and
 - (B) whether in the same circumstances other power stations and related facilities located in the State or the rights, benefits or obligations of the proprietors of those other power stations and related facilities would be affected or potentially affected; and
- (c) For the avoidance of doubt, each party to this Agreement acknowledges that:
- (i) the exercise of a right conferred on a person by this Agreement or a Project Agreement, or the performance or satisfaction of an obligation imposed on a person by this Agreement or a Project Agreement, does not contravene paragraphs (a) (i), (ii) or (iii); and
 - (ii) if an action or combination of actions is not directed at affecting the Power Station or affecting, modifying or reducing the rights or benefits or adding to the obligations of a Participant in relation to the Power Station but, as a result solely of SECV or another body being a statutory body of the State, that action or combination of actions affects or potentially affects the Power Station or affects, modifies or reduces or potentially affects, modifies or reduces the rights or benefits or adds to or potentially adds to the obligations of a Participant in relation to the Power Station in a way that is different to its effect or potential effect on other power stations and related facilities owned by SECV or another statutory body or the rights, benefits or obligations of SECV or another statutory body as proprietor of those other power stations and related facilities, then that action or combination of actions does not contravene paragraphs (a) (i), (ii) or (iii).

SCHEDULE 1—continued

4.6 Clause 4.5 does not prevent or restrict the State, SECV or any agent, instrument or statutory body of the State, or Council, taking any action or combination of actions which is or involves:

- (a) a sale, lease or other disposal of all or part of any interest in:
 - (i) a power station or the Power Station; or
 - (ii) facilities associated with the generation by, or supply, transmission or distribution of electricity from, a power station,
- (b) the supply of products, by-products, materials or services used or produced by, or through the operation of, a power station on terms different to those contained in a contract;
- (c) the sale, purchase or supply of electricity from a power station on terms different to those contained in a contract; or
- (d) the issue of a Permit in respect of a power station which Permit is subject to conditions different to the conditions applying to an equivalent Permit issued in respect of the Power Station,

and the taking of an action or combination of actions described in paragraphs (a)–(d) does not contravene Clause 4.5.

4.7 In Clause 4.6:

- (a) “power station” means a power station for the generation of electricity other than the Power Station; and
- (b) “contract” means a Project Agreement, this Agreement or any other agreement entered into for the purposes of the Project by the Operator or by one or more Participants.

5. LIABILITY OF THE STATE

A variation, modification or replacement of a Project Agreement after the date of this Agreement does not vary, modify or reduce the rights or add to the obligations of the State under this Agreement unless that variation, modification or replacement has been approved for the purposes of this Agreement by notice in writing by the Minister.

6. ASSIGNMENT

6.1 (a) Rights under this Agreement or any part of this Agreement cannot be assigned, mortgaged, charged, disposed of or otherwise dealt with by a Participant except as provided in this Clause.

(b) An assignment, mortgage, charge, disposition or other dealing with rights under this Agreement or any part of this Agreement other than as provided in this Clause is void.

6.2 A Participant may assign, mortgage, charge, dispose of or otherwise deal with its rights under this Agreement or any part of this Agreement with the prior written consent of the Minister.

6.3 A Participant may mortgage or charge its rights under this Agreement or any part of this Agreement:

(a) in favour of any other party to a Project Agreement to secure the performance by that Participant of its obligations under that Project Agreement; and

(b) in favour of any other person to secure the payment or repayment of (or satisfaction of reimbursement obligations with respect to) financial accommodation provided to or for the benefit of that Participant for the purpose, directly or indirectly, of financing or

SCHEDULE 1—*continued*

refinancing costs of acquiring, holding, developing or maintaining that Participant's interest in the Project—

subject to that Participant first procuring the mortgagee or chargee to enter into a deed of covenant in favour of the Minister (in such form as the Minister reasonably requires) pursuant to which the mortgagee or chargee agrees that, in the exercise of any power of sale or other power of enforcement contained in the instrument creating the mortgage or charge or conferred by law, the mortgagee or chargee will be bound to comply with the provisions of this Clause 6.

- 6.4 A Participant may assign, dispose of or otherwise deal with its rights under this Agreement or any part of this Agreement to an assignee or disponee of its rights or an equivalent part of its rights under the Joint Venture Agreement subject to that Participant first procuring the assignee or disponee to enter into a deed of covenant in favour of the Minister (in such form as the Minister reasonably requires) pursuant to which the assignee or disponee agrees to be bound by this Agreement as if named as a party to this Agreement in place of that Participant from which its interest is derived to the extent of the interest assigned, disposed of or otherwise dealt with.
- 6.5 The Minister may require as a condition to the granting of consent under Clause 6.2 that a Participant procure the execution by the assignee, mortgagee, chargee, disponee or other relevant person of a deed of covenant in favour of and in such form as the Minister reasonably requires:
- (a) in the case of a mortgagee or chargee, pursuant to which the mortgagee or chargee agrees that, in the exercise of any power of sale or power of enforcement contained in the instrument creating the mortgage or charge or conferred by law, the mortgagee or chargee will be bound to comply with the provisions of this Clause 6; or
 - (b) in the case of an assignee, disponee or other relevant person, pursuant to which the assignee, disponee or other relevant person agrees to be bound by this Agreement as if named as a party to this Agreement in place of the Participant from which its interest is derived to the extent of the interest assigned, disposed of or otherwise dealt with.
- 6.6 A Participant which has assigned, disposed of or otherwise dealt with its rights under this Agreement in accordance with this Clause will be released from its obligations under this Agreement to the extent of the interest so assigned, disposed of or otherwise dealt with.

7. TERMINATION

- 7.1 If a Participant goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and there is a failure by that Participant to observe a financial obligation under the Joint Venture Agreement which failure is not cured within 90 days, the State may by notice in writing given to that Participant terminate the obligations of the State to that Participant under this Agreement. Termination under this Clause does not prejudice any right, obligation or liability of the State, that Participant or any other Participant then accrued or incurred under this Agreement and does not prejudice any right, obligation or liability of the State or other Participant thereafter arising under this Agreement.
- 7.2 The State may by notice in writing to the Participants terminate this

SCHEDULE 1—continued

Agreement at any time after the Power Supply Agreement has been terminated (whether by effluxion of time or otherwise) or discharged, but such termination will be without prejudice to any right, obligation or liability of the State or a Participant then accrued or incurred under this Agreement.

8. NOTICES

8.1 A notice, approval, consent or other communication in connection with this Agreement:

(a) must be in writing; and

(b) must be left at the address or sent by registered post (airmail if posted to or from a place outside Australia) to the address notified by the addressee to each other party for the purposes of this Agreement or if the addressee notifies another address then to that address.

8.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

8.3 A letter sent by registered post is taken to be received on the seventh (fourteenth, if posted to or from a place outside Australia) day after posting.

9. VARIATION OF AGREEMENT

This Agreement may from time to time be added to, substituted, cancelled or varied in accordance with section 9 of the Loy Yang B Act.

10. WAIVER

A provision or a right granted under this Agreement may not be waived except in writing signed by the party granting the waiver.

11. EXERCISE OF RIGHTS

A party may, subject to Clause 12, exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

12. APPROVALS AND CONSENTS

The Minister and each party must act reasonably in making a decision or giving or withholding approval or consent under any provision of this Agreement.

13. REMEDIES CUMULATIVE

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

14. FURTHER ASSURANCES

Each party agrees, at its own expense, to do everything reasonably necessary to give effect to this Agreement (if it is requested to do so by another party), including, but not limited to, the execution of documents.

Loy Yang B Act 1992
Act No. 35/1992

SCHEDULE 1—*continued*

15. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

- 15.1 This Agreement is governed by the law in force in Victoria.
- 15.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to any action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- 15.3 Without preventing any other mode of service, any document in an action (including, but not limited to, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under Clause 8.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

SIGNED by DAVID WHITE in the presence of:

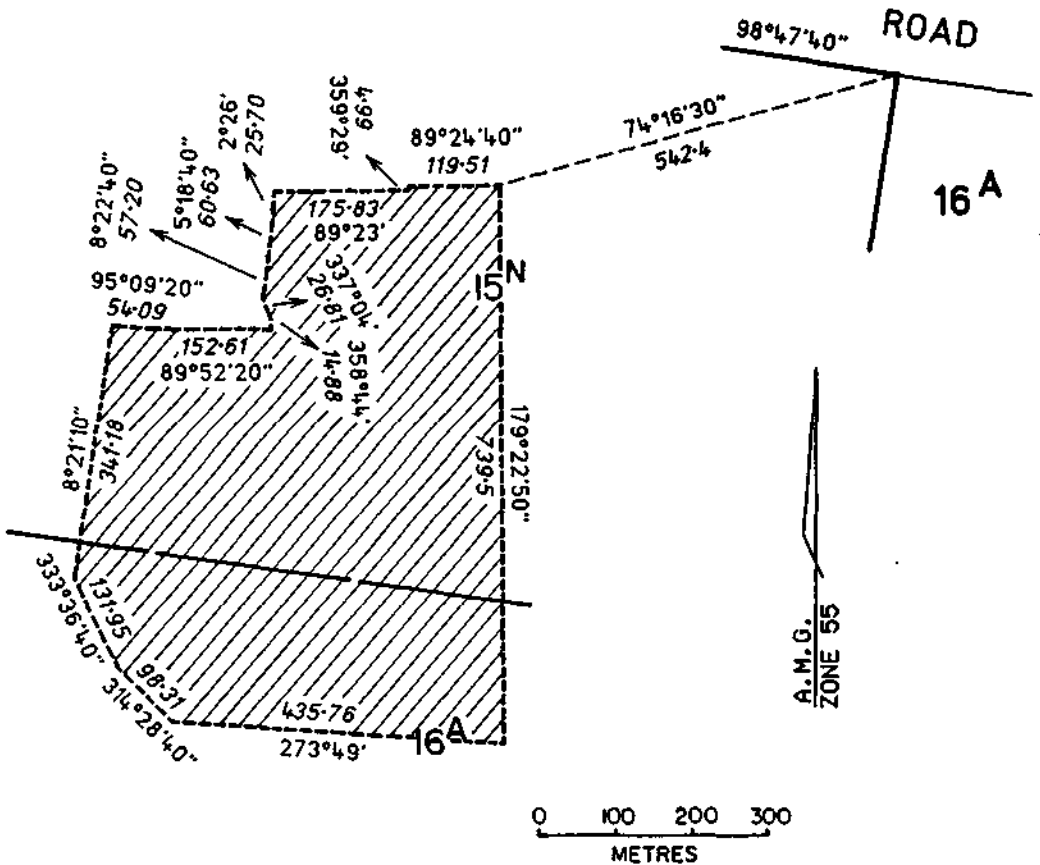
THE COMMON SEAL of
STATE ELECTRICITY COMMISSION OF VICTORIA
was affixed in the presence of:

THE COMMON SEAL of
LOY YANG B POWER STATION PTY LTD
was affixed in the presence of:

THE COMMON SEAL of
VICTORIAN POWER STATION INVESTMENTS
PTY LTD was affixed in the
presence of:

THE COMMON SEAL of
MISSION ENERGY AUSTRALIA PTY LTD
was affixed in the presence of:

SCHEDULE 2
Loy Yang Land



County of Buln Buln—Parish of Loy Yang

NOTES

1. *Minister's second reading speech—*
Legislative Assembly: 19 May 1992
Legislative Council: 2 June 1992
2. The long title for the Bill for this Act was "A Bill relating to the Loy Yang B power station, to amend the State Electricity Commission Act 1958 and for other purposes."
3. Section headings appear in bold italics and are not part of the Act. (See Interpretation of Legislation Act 1984.)