



**ELECTRICITY INDUSTRY ACT 2000  
APPLICATION FOR A RETAIL LICENCE**

**Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228)  
trading as the EA-IPR Retail Partnership (ABN 67 269 241 237)**

**NOTICE OF DECISION**

**28 JUNE 2005**

## SUMMARY

1. Pursuant to provisions of section 19 of the *Electricity Industry Act 2000* (**EI Act**) the Essential Services Commission (**the Commission**) has granted Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228) trading as the EA-IPR Retail Partnership (ABN 67 269 241 237) (**the applicant**) a licence to sell electricity in Victoria.

## BACKGROUND

### Requirement to obtain a licence

2. Section 16 of the EI Act provides that a person must not engage in the sale of electricity unless the person is -
  - the holder of a licence authorising that activity; or
  - exempted from the requirement to obtain a licence in respect of that activity.

### Entitlement to apply for a licence

3. Section 18 of the EI Act provides that a person may apply to the Commission for a licence authorising one or more of the following activities:
  - (a) to generate electricity for supply or sale;
  - (b) to transmit electricity;
  - (c) to distribute or supply electricity;
  - (d) to sell electricity.

### The applicant

4. On 18 April 2005, EnergyAustralia and the International Power Australia group announced a 50:50 partnership to retail electricity and gas in Victoria (and South Australia). The applicant is trading as the EA-IPR Retail Partnership (**the partnership**). The primary parties to the partnership are the holders of various licences with the Commission as follows -
  - EnergyAustralia is the holder of an electricity retail licence issued by the Commission on 1 July 1998 and a gas retail licence issued by the Commission on 24 November 1999 and
  - International Power Australia is the holder of an electricity retail licence issued by the Commission on 9 July 2004 and is also the holder of generation licences for Hazelwood and Loy Yang B (70 percent).and electricity retail licences issued by the Commission 24 November 1999. EA is a New South Wales-based government business enterprise that retails gas and electricity in New South Wales, Victoria and South Australia. International Power Australia is a subsidiary of International Power plc a publicly listed and traded corporation on the London Stock Exchange. It holds interests in North America, Europe, the Middle East, and Australia including other assets in parts of Asia or under construction.

4. The Applicant states that it is a partnership comprising the subsidiary of each of Energy Australia (EA) and International Power (Retail) Pty Ltd (IPR); and that the subsidiaries agree to operate as a partnership pursuant to the Partnership Agreement. It is noted that the Partnership Agreement is subject to a number of conditions precedent, including, that the Applicant obtains the approvals it requires to operate as proposed (from the ACCC, the Treasurer under the *Foreign Acquisitions and Takeovers Act* 11974 (Cth), from the ESC, and otherwise). Accordingly, the partnership itself is not yet in existence. The partners' obligations to each other do not commence until the conditions precedents are satisfied, or 1 July 2005, whichever is later.
5. Information provided by the applicant demonstrates that its directors and key personnel have had considerable experience in the energy sector in Victoria and elsewhere. In correspondence to the Commission as part of the application process, the applicant states that "*the core capability to operate the business will be transferred to the Partnership from the existing retail energy businesses of EnergyAustralia (EA) and International Power (Retail) Pty Ltd (IPR).*" The Commission has also assessed this component of knowledge and expertise as part of the application processes for a retail electricity licence under the provisions of section 19 of the EI Act. As noted above, the entities that comprise the partnership have already been licensed and traded in Victoria within the retail energy market. As demonstrated under the terms of a specific agreement, the applicant is able to leverage its operations based in part on the EA retail businesses. This arrangement will be reviewed not before the completion of 6-months of trading.

### **The application**

6. By letter dated 17 May 2005, the applicant submitted an application to the Commission for a licence to sell electricity in Victoria and also provided the Commission with attachments, some of which were marked 'commercial and in confidence'. The attachments to the application contained amongst other things, commentary relevant to the objectives of the *Essential Services Commission Act* 2001 (ESC) and EI Act, details of the applicant's background, structure, experience and expertise, various commercial agreements, operating capability and skills (including energy trading arrangements) and profiles of key personnel. In particular, as prescribed at section 19(2) of the EI Act, the applicant also set out in details its financial viability and technical capacity.

### **Advertising the application**

7. Section 19(6) of the EI Act provides that the Commission must publish a notice in a daily newspaper generally circulating in Victoria specifying that the application has been lodged and inviting interested persons to make submissions to the Commission in respect of the application within a period and in a manner specified in the notice.
8. A notice was placed in *The Age* newspaper on Saturday 21 May 2005. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from the applicant by the close of business on by 15 June 2005. The Commission received no inquiries or submissions.

### **Express invitations to submit**

9. By letter dated 20 May 2005, the Commission wrote to each current licensee inviting them to make a submission in respect of the application. Invitations were also sent to various interested parties and stakeholders including the members of the Commission's Customer Consultative Committee.
12. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

### **Provisions relating to the Commission's decision**

13. Section 19(1) of the EI Act provides that, subject to sub-sections (2) and (3), the Commission may grant or refuse the application for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and under the ESC Act.
14. As previously noted, Section 19(2) of the EI Act provides that the Commission must not grant an application for a retail licence unless the Commission is satisfied that -
  - (a) subject to sub-section (3), in the case of an application for a licence to sell electricity, the applicant is financially viable; and
  - (b) subject to sub-section (4), the applicant has the technical capacity to comply with the conditions of the licence.

## **CONSIDERATION OF THE APPLICATION**

### **General approach**

15. A decision to grant a retail licence to a new market entrant has the potential to promote competition in the generation, supply and in particular, the sale of electricity and, therefore, to also promote efficiency and economy in those activities. Accordingly, consistent with its objectives under the provisions of both the EI Act and the ESC Act, the Commission has granted a licence to trading as the EA-IPR Retail Partnership.

## **ISSUES**

### **Technical capacity**

16. The degree of technical capacity required to satisfy the Commission in terms of section 19(2) (b) of the EI Act varies according to the nature of the licence to be issued. It is the applicant's intention to commence its licensed activities within 12-months from the granting of a retail licence, and therefore under the provisions of section 19(2) (b) of the EI Act the Commission must be satisfied with the applicant's technical capacity to comply with the conditions of licence.
17. The applicant provided particulars in its application of its technical capacity to comply with the conditions of the licence. The applicant's key personnel have been in the energy sector in either in the Australian markets, most notably Victoria, South Australia and New South Wales for a number of years in various capacities.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that the applicant has the technical capacity to comply with the proposed licence conditions. Interviews, documentation and meetings with key personnel have confirmed that the applicant has acquired a comprehensive knowledge of the Commission's Codes and Guidelines.

### **Financial viability**

18. The applicant must demonstrate its financial viability under the provisions of section 19(2) (a) of the EI Act. Section 19(3) of the EI Act provides that the Commission does not have to be satisfied as to the financial viability if an applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements. Accordingly, the applicant has advised the Commission of its inquiries and intention to apply for registration as a customer with the National Marketing Management Company (NEMMCO) and that it will comply with the prudential requirements imposed by NEMMCO. Furthermore, the applicant has confirmed that –
- the applicant has sufficient financial resources arising from the capital contributions made by the parents of the entities involved in the partnership.
  - it has registered with NEMMCO as an 'Intending Participant' and registration as a full participant will be completed upon the Commission granting a retail licence. The applicant has indicated that it has satisfied the prudential requirements of NEMMCO and this will be finalised upon the granting of the licence.
  - the prudential requirements have been satisfied in order to accommodate a "Use of System Agreement" with licensed electricity distributors, 'Heads of Agreement' have been negotiated and settled with licensed distributors and these arrangements will be finalised upon the Commission granting a retail licence.

Considering the information provided and notwithstanding the provisions of section 19(3) of the EI Act, the Commission has applied its standard assessment of financial viability to the applicant. The Commission required the applicant to provide evidence of its financial viability. The process requires, amongst other things, for the applicant to outline its financial position, and provide data concerning its business plans, management knowledge and experience, and the level of understanding and the application of risk management, including but not limited to corporate governance principles, financial controls and reporting and compliance practices.

The Commission has concluded for the purpose of this application for the granting of a licence to retail electricity, and no other purpose, that the applicant, at the time of the consideration of the application, has satisfied the financial test and trading as the EA-IPR Retail Partnership can be considered to be financially viable.

### **Compliance with Codes and Rules**

19. The provisions of Victorian electricity retail licences require the licensee to comply with all applicable provisions of, amongst other things, the Electricity Distribution Code, the Electricity System Code, the Electricity Customer Metering Code, the Electricity Customer Transfer Code, the Energy Retail Code and any other relevant code dealing with retailers' market conduct.

20. The licence being granted to the applicant contains the licence conditions obliging it to comply with, amongst other things, the full retail competition regulatory framework.

## **DECISION**

22. The Commission is satisfied that the applicant-
- has the technical capacity to comply with the conditions of the licence to be granted;
  - has satisfied the financial viability requirements of the EI Act; and that

the granting of a licence is not inconsistent with the EI Act.

23. Having regard to the objectives specified in section 8 of the *Electricity Industry Act 2000* and section 10 of the *Essential Services Commission Act 2001*, the Commission has granted an electricity retail licence to Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228) trading as the EA-IPR Retail Partnership (ABN 67 269 241 237). A copy of the licence forms an attachment to this decision.

**THE COMMON SEAL of** )  
**THE ESSENTIAL SERVICES** )  
**COMMISSION** )  
was affixed pursuant )  
to the authority of the Commission on )  
28 June 2005. )

**JOHN C TAMBLYN**  
**Chairperson**