



**GAS INDUSTRY ACT 2001
APPLICATION FOR A RETAIL LICENCE**

**VICTORIA ELECTRICITY PTY LTD
(ABN 69100 528 327)**

NOTICE OF DECISION

22 DECEMBER 2004

SUMMARY

1. Pursuant to provisions of section 25 of the *Gas Industry Act 2001* (**GI Act**) the Essential Services Commission (**the Commission**) has granted Victoria Electricity Pty Ltd (**VEL**) (**the applicant**) ABN 69 100 528 327 a licence to sell (retail) gas in Victoria.

BACKGROUND

Requirement to obtain a licence

2. Section 22 of the GI Act provides the following:
 - (1) *A person must not provide services (other than the sale of gas by retail) by means of a distribution pipeline, either as principal or agent, unless the person –*
 - (a) *is the holder of a licence authorising that person to provide those services; or*
 - (b) *is exempt from the requirements to hold a licence in respect of those services because of an order under section 24. [of the GI Act]*
 - (2) *A person must not engage in the sale of gas by retail, either as principal or agent, unless the person –*
 - (a) *is the holder of a licence authorising the sale of gas by retail; or*
 - (b) *is exempt from the requirement to obtain a licence in respect of the sale of gas because of an Order under section 24. [of the GI Act]*

Entitlement to apply for a licence

3. Section 25 of the GI Act provides that a person may apply to the Commission for a licence:
 - (a) authorising the person to provide services by means of a distribution pipeline; or
 - (b) authorising a person to sell gas by retail; or
 - (c) authorising a person to engage in providing services as a market participant by means of an underground storage facility.

The applicant

4. The applicant, VEL, is a company incorporated under the *Corporations Act 2001* (Cth). The applicant was incorporated under the *Corporations Act 2001* (Cwlth) on 13 May 2002. At the Commission's meeting of 21 August 2002, it granted a licence to retail electricity pursuant to the provisions of section 19 of the *Electricity Industry Act 2000* (**EI Act**). In correspondence dated 24 March 2004, VEL confirmed that as of March 2004, VEL became registered as a market participant with NEMMCO pursuant to the National Electricity Code and has subsequently commenced the retailing of electricity.

5. VEL has advised that since submitting its application for a Gas Retail licence on 4 December 2003, the ownership structure of the entity has changed from being beneficially owned and controlled by Infratil Limited, (a New Zealand public and listed corporation that has interests in infrastructure projects including airports, energy and ports amongst other things), to the following:

- Cheesman Investment Limited 75,000 shares
- Eskrigge Investment Limited 75,000 shares
- Infratil Securities Limited* 1,150,000 shares

[* Infratil Securities Limited also holds 3,500,000 redeemable preference shares.]

Each entity is registered in New Zealand. Cheesman Investment Limited is the corporate trustee of the Cheesman Family Trust; Eskrigge Investment Limited is the corporate trustee of the Eskrigge Family Trust and Infratil Securities Limited is beneficially owned and controlled by Infratil Limited.

6. Information provided by the applicant demonstrates that its directors and key personnel have had considerable experience in the privatised energy sector in New Zealand. The area of knowledge and expertise was also assessed 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 entity has now commenced trading and retailing electricity in Victoria following the granting of an electricity retail licence in Victoria and this has increased its exposure and knowledge of operating in the energy retail market. The applicant is able to leverage its operations based in part on the electricity retail business.

The application

7. By letter dated 4 December 2003, VEL submitted an application to the Commission for a licence to retail gas 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 GI Acts, details of the applicant's background, structure, experience and expertise, operating capability and skills (including energy trading arrangements) and profiles of directors and key personnel. The Commission's objective as provided at section 18 of the GI Act provides in part the requirement "*to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach between the gas industry and the electricity industry.*" Accordingly, the applicant also updated details relating to its original application for an electricity retail licence of May 2002 with regard to technical capacity and financial viability to operate a gas retail business in conjunction with an electricity retail business.

Advertising the application

8. Section 26 (2) of the GI 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.
9. A notice was placed in *The Age* newspaper on Saturday 13 December 2003. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from VEL by the close of business on by 18 January 2004. The Commission received no inquiries or submissions.

Express invitations to submit

10. By letter dated 12 December 2003 the Commission wrote to each 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.
11. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

Provisions relating to the Commission's decision

12. During the interim period between the submission of the application and its consideration, at the request of the Commission, the applicant completed its Gas Safety Case pursuant to the provisions of the *Gas Safety Act 1997*.
13. Section 26(1) of the GI Act provides that the Commission may grant or refuse the application for any reason it considers appropriate, having regard to the objectives of the Commission under the GI Act and under the *Essential Services Commission Act 2001 (ESC Act)*.
14. The objectives specified under section 18 of the GI Act are -
 - (a) to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach between the gas industry and the electricity industry; and
 - (b) to promote the development of full retail competition
15. Section 8 of the ESC Act provides that –
 - (a) In performing its functions and exercising its powers, the primary objective of the Commission is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.
 - (b) In seeking to achieve its primary objective, the Commission must have regard to the following facilitating objectives:
 - (i) To facilitate efficiency in regulated industries and the incentive for efficient long-term investment;

- (ii) To facilitate the financial viability of regulated industries;
- (iii) To ensure that the misuse of monopoly or non-transitory market power is prevented;
- (iv) To facilitate effective competition and promote competitive market conduct;
- (v) To ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- (vi) To ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and
- (vii) To promote consistency in regulation between States and on a national basis.

16. Section 25(2) of the GI Act provides that

(2) An application must be in a form approved by the Commission and accompanied by such documents as may be determined by the Commission.

CONSIDERATION OF THE APPLICATION

General approach

- 17. A decision to grant a gas retail licence to a new market entrant has the potential to promote competition in the supply and sale of gas and, accordingly, to promote efficiency and economy in those activities.
- 18. Accordingly, consistent with its objectives under the ESC Act and the requirements of the GI Act for a granting a licence, the Commission is of the view that unless there are good reasons to the contrary, its approach should be to grant a licence to an applicant. The principal grounds on which the Commission might refuse an application would be to protect the interests of customers, or if it believed that the licensee did not have the technical capacity to comply with the conditions of the licence or the licensee did not satisfy the cross-ownership provisions in the GI Act.
- 19. The granting of a licence to VEL to retail gas to domestic customers will satisfy the Commission's overall objective of protecting the long term interests of Victorian consumers with regard to the price of gas through facilitating effective competition and promoting competitive market conduct.

ISSUES

Technical capacity

- 20. As cited above, the applicant has provided particulars in the application of its technical capacity to comply with the conditions of the licence. The applicant has significant experience in the energy sector on a global basis.

21. As previously noted above, the applicant has also satisfied the requirements for a Gas Safety Case as prescribed by the Office of Gas Safety under the provisions of the *Gas Safety Act 1997*.

Financial viability

22. VEL is supported by its beneficial owner, Infratil Limited, a profitable New Zealand based public and listed company with interests around the world in infrastructure projects including airports in New Zealand and Scotland, ports and the energy sector. The company has a market capitalisation that exceeds AUD\$400 million.

Compliance with Codes and Rules

23. VEL has met all of the prerequisites of the applicable codes or guidelines.

DECISION

24. The Commission is satisfied that -
- the applicant has the technical and financial capacity to comply with the conditions of the licence to be granted; and
 - the granting of a licence would not be inconsistent with the GI Act.
25. Having regard to the objectives specified in section 18 of the *Gas Industry Act 2001* and section 8 of the *Essential Services Commission Act 2001*, the Commission has decided to grant the application for the issue of a gas retail licence to Victoria Electricity Pty Ltd ABN 69 100 528 327. 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)
22 December 2004.)

JOHN C TAMBLYN
Chairperson