



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

**ENERGY BRIX AUSTRALIA CORPORATION PTY LTD
ABN 79 074 736 833**

NOTICE OF DECISION

15 February 2006

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 Brix Australia Corporation Pty Ltd (**Energy Brix**) (ABN 79 074 736 833) (**the applicant**) a licence to sell electricity to customers in Victoria with a consumption of greater than 160 MWh per annum.

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.
4. On 11 August 2005, Energy Brix Australia Corporation Pty Ltd submitted an application for a licence to retail electricity in Victoria. Energy Brix proposes to retail electricity to customers whose usage of electricity exceeds 160 MWh per annum. The applicant is the holder of a generation licence issued by the Commission on 23 June 1995 and operates a generation facility at Morwell Briquette and Power Complex. The total output of the Energy Brix electricity generator amounts to 170 MW and this is also complemented by the production of briquettes for retail sale in the State and elsewhere.
5. Energy Brix is a wholly owned subsidiary of the HRL Group of companies, and the beneficial owner is HRL Limited ABN 89 061 930 756 (**HRL**). HRL is a public company that is involved in a range of activities including but not restricted to energy, technology and project development. HRL has some 20 offices around Australia and employs a total of 600 people. This entity is involved with, or is directly, financing an array of projects including the development of a cogeneration plant in New Zealand and the reduction of greenhouse gases related to brown coal.
6. Information provided by the applicant demonstrates that its directors and key personnel have considerable experience in the conduct of operating and managing a business and demonstrated knowledge of the energy sector in Victoria through its position as a generator. It considers that participation in the retail market (that is, with customers with an annual consumption of greater than 160 MWh) would be an extension of its existing operations. The applicant notes the following in support of its application as a retailer-

- Participation as a retailer would provide a natural hedge for the entity's generation position providing another revenue stream and reduce exposure to market volatility;
 - The integration (generation and retailing) will increase the applicant's capacity to compete in the energy market;
 - Increased operational diversity in the energy market will result in a diversity of credit exposure;
 - The capacity to offer multi-energy options to customers in the market including entities that comprise the HRL group of companies.
7. The applicant has undertaken market research in Victoria and considers that with its combined operational expertise and understanding of the large customer segment of the market, it will increase diversity and competition and deliver efficiencies.
 8. The Commission has 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 and notes that Energy Brix will leverage its experience, and knowledge of retail operations based in part on its existing generation business.

The application

9. By letter dated 11 August 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 Act)* and EI Act, details of the applicant's background, structure, experience and expertise, various commercial agreements with third parties, operating capability and skills (including energy trading arrangements), profiles of key personnel and a detailed appraisal of its financial viability. In particular, as prescribed at section 19(2) of the EI Act, the applicant has also set out in detail its financial viability and technical capacity.

Advertising the application

10. 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.
11. A notice was placed in *The Age* newspaper on Friday, 26 August 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 22 September 2005. The Commission received no inquiries or submissions.

Express invitations to submit

12. By letter dated 26 August 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 members of the Commission's Customer Consultative Committee.
13. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

Provisions relating to the Commission's decision

14. 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.
15. 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

16. 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 Energy Brix Australia Corporation Pty Ltd (ABN 79 074 736 833).

Technical capacity

17. 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.
18. 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 involved in the Australian energy market, in Victoria and elsewhere, for a number of years in various capacities. The company has a thorough understanding of the segment in which it proposes to conduct its retailing, that is, to entities that use greater than 160 MWh of electricity per annum.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that Energy Brix Australia Corporation Pty Ltd (ABN 79 074 736 833), has the technical capacity to comply with the proposed licence conditions. Interviews, documentation and meetings with key personnel have confirmed that Energy Brix Australia Corporation Pty Ltd (ABN 79 074 736 833) has acquired a comprehensive knowledge of the Commission's requirements and obligations.

Financial viability

19. 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 rules of the National Electricity Market and that 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 Electricity Marketing Management Company (NEMMCO) and that it will comply with the prudential requirements imposed by NEMMCO. Furthermore, the applicant has confirmed that –
- It is already a participant in the National Electricity Market, the applicant is familiar with the NEM and the applicant has completed preliminary registration with NEMMCO and this will be finalised on the granting of a retail licence.
 - The applicant has sufficient financial resources for the purposes of operating a retail electricity business that focuses on customers seeking to enter into arrangements for the sale of electricity where annual usage exceeds 160 MWh.
 - The applicant is the holder of an Australian Financial Services Licence (No: 246425) issued by the Australian Securities and Investments Commission and has satisfied the on going prerequisites to maintain this licence.
 - Preliminary negotiations have been completed to settle the prudential arrangements with NEMMCO.
 - The prudential requirements have been satisfactorily negotiated (pending the grant of a licence) for “Use of System Agreement” with specified electricity 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 for no other purpose, that the applicant, at the time of the consideration of the application, has satisfied the financial test and Energy Brix Australia Corporation Pty Ltd (ABN 79 074 736 833) can be considered to be financially viable.

Compliance with Codes and Rules

20. The provisions of Victorian electricity retail licences require the licensee to comply with all applicable provisions of Codes and Guidelines as they apply to a retailer who will retail to customers purchasing electricity where usage exceeds 160 MWh.
21. 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 Energy Brix Australia Corporation Pty Ltd (ABN 79 074 736 833)-

- 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 Brix Australia Corporation Pty Ltd (ABN 79 074 736 833). 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)
15 February 2006.)

GREG WILSON
Chairperson