



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

**INTERNATIONAL POWER (RETAIL) PTY LTD
(ACN 107 548 854)**

NOTICE OF DECISION

9 JUNE 2004

SUMMARY

1. Pursuant to provisions of section 19 of the *Electricity Industry Act 2000 (EI Act)* the Essential Services Commission (**the Commission**) has granted International Power (Retail) Pty Limited (**IPR Retail**) ACN 107 548 854 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. The applicant, IPR Retail, is a company incorporated in Australia and registered under the provisions of the *Corporations Act 2001 (Cwlth)* company effective from 7 January 2004. The applicant is a 100 percent owned subsidiary of International Power (Australia) Holdings 2 Pty Ltd (**IPR-A**), a holding company for all of International Power's Australian interests. IPR-A is ultimately owned and controlled by International Power plc, a public and listed corporation on the London Stock Exchange and the New York Stock Exchange. On the London Stock Exchange, International Power plc has a market capitalisation of in excess of AUD\$4.0 billion or £UK1.557 billion.
5. International Power plc as the parent company has interests in North America, Europe, the Middle East, and Australia including other assets in parts of Asia or under construction. It has a total capacity of generation amounting to 11,072 (from a total gross share of 16,505 MW) with a further 1,609 MW scheduled to come on line. International Power will ultimately own and control some 12,681 MW of generating capacity world wide.
6. The entity was granted a retail licence in South Australia by the Essential Services Commission of South Australia (**ESCOSA**) at its meeting of 25 May 2004. The entity proposes to retail to all levels of customers in South Australia. In Victoria, IPR-R proposes to primarily market to customers with a consumption of greater than 160 MWh per annum, however, it also intends to retail to relevant customers, that is, the group's employees residing in Victoria.

7. Information provided by the applicant demonstrates that it has the relevant key staff to conduct a large retail operation in Victoria. The parent company, IPR-A, will facilitate and leverage the use of key operational staff with considerable experience and knowledge of the retail sector to ensure the effective functioning of the retail operation, including the current positions of Managing Director, Commercial Director, General manager, finance, Trading Manager, Manager Regulation, Risk Manager, Manager Information Technology and the Financial Compliance Manager. The applicant has appointed a Retail Manager, who like the rest of the organisation, has had extensive experience in the energy sector, with particular emphasis on establishing and operating a retail operation. The Retail Manager has also been responsible for the recruitment of staff in various core roles and functions of the retail operation including personnel involved in, amongst other things, human resources, finance, field and telephone sales, metering, call centre operations, credit support and service delivery.

The application

8. By letter dated 5 April 2004, 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, corporate and operational structures, the experience and expertise in the energy sector, operating capability and skills (including energy trading arrangements) and profiles of directors and 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

9. 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.
10. A notice was placed in *The Age* newspaper on Saturday 17 April 2004. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from IPR-R by the close of business on by Friday, 14 May 2004. The Commission received no inquiries or submissions.

Express invitations to submit

11. By letter dated 16 April 2004, 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 IPR-R.

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. IPR-R 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 UK and / or Victoria (where it owns and operates generating capacity in both Victoria and South Australia) for a number of years in various capacities with the Australian holding company or the UK parent company.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that IPR-R has the technical capacity to comply with the proposed licence conditions. Interviews and meetings with key personnel have indicated that IPR-R has conducted comprehensive training of staff in all aspects of the retail operations and that staff have 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, IPR-R, has confirmed that –
- based on independent legal advice, in accordance with Part 7 of the *Corporations Act* 2001 it holds an Australian Financial Services Licence issued by the Australian Securities and Investments Commission to facilitate its hedging arrangements. This licence test imposes a number of comprehensive prudential tests to determine an entity's financial viability.
 - 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. IPR-R 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 IPR-R 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 Electricity 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.

Prohibited Interests

21. IPR-A owns 92 percent of the Hazelwood Generating Plant in the La Trobe Valley in Victoria. The balance is owned and controlled by the Commonwealth Bank of Australia and its subsidiaries. The applicant, IPR-R does not have any prohibited interests concerns arising from the provisions of section 68 of the EI Act.

DECISION

22. The Commission is satisfied that IPR-R-
 - 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 International Power (Retail) Pty Ltd (ACN 107 548 854).