



GAS INDUSTRY ACT 2001
APPLICATION FOR A RETAIL LICENCE

SANTOS DIRECT PTY LTD

ABN 61 108 846 288

DECISION

29 September 2004

SUMMARY

Pursuant to the provisions of section 25 of the *Gas Industry Act* 2001 (the **GI Act**) the Essential Services Commission (**the Commission**) has decided to grant a licence to generate electricity for supply or sale in Victoria to be held by Santos Direct Pty Ltd ABN 62 108 846 288 (**the applicant**).

BACKGROUND

Requirement to obtain a licence

1. Section 22(2) of the GI Act provides that a person must not provide services in the sale of gas by retail, either as principal or as agent, unless the person -
 - is the holder of a licence authorising the sale of gas by retail; or
 - is exempt from the requirement to obtain a licence in respect of the sale of gas by retail because of an Order under section 24.
2. The applicant has not been exempted from the requirement to obtain a licence.

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 authorising one or more of the following activities as specified in the licence -
 - (a) authorising the person to provide services by means of a distribution pipeline; or
 - (b) authorising the person to sell gas by retail; or
 - (c) authorising the person to engage in providing services as a market participant by means of an underground storage facility.

The applicant

4. The applicant is Santos Direct Pty Ltd ABN 62 108 846 288 (**Santos Direct**).
5. Santos Direct is a company incorporated under the *Corporations Act* 2001 (Cwlth). It is a special purpose vehicle established by Santos Limited for the purposes of retailing gas to large and / or industrial customers with demand greater than 300 TJs per annum, and to also sell gas on the “spot” markets in South Australia and Victoria.
6. Santos Direct is beneficially owned and controlled by the public and listed corporation, Santos Limited (**Santos**). Santos has assets that exceed \$4 billion and is a corporation which has as its primary focus the production of oil, natural gas and gas liquids within and off shore of Australia, and major interests in South East Asia, the Suez Gulf, and the United States of America.

The application

7. On Friday, 10 August 2004, the applicant formally applied for a licence to retail gas in Victoria. The applicant provided the Commission with details of its background, structure, and experience in the energy industry, operating, technical and financial capabilities.

8. The application also included a statement of the applicant's ability to comply with applicable codes and regulations upon granting of the retail licence.

Advertising the application

9. 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.
10. The Commission complied with the requirements of section 26(2)(i) of the GI Act by publishing a notice in *The Age* newspaper on 20 August 2004. The advertisement invited interested persons to make submissions to the Commission in respect of the application by the close of business on 17 September 2004.
11. By letter dated 20 August 2004, the Commission wrote to each licensed entity inviting them to make a submission in respect of the application. Invitations to comment were also sent to the members of the Commission's Customer Consultative Committee and other interested parties.
12. The Commission did not receive any submissions in respect of the application.

Provisions relating to the Commission's decision

13. Section 26(1) of the GI Act provides that the Commission may grant or refuse the application for a gas retail licence 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* (the 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 Santos Direct to retail gas to major and / or industrial customers with demand greater than 300 TJs per annum will satisfy the Commission's overall objective of protecting the long term 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. 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. Santos Direct is a special purpose vehicle established by the parent, the public and listed corporation, Santos Limited. Santos has assets that exceed \$4 billion dollars and is producing strong revenue and growth as it expands its operations on a global basis. For the first half of 2004 it produced a net profit of \$86 million and maintains a gearing ratio of less than 30 percent.

Prohibited interest

23. In the Autumn 2004 Session of the Parliament of Victoria, the GI Act was amended in to delete restrictions on 'significant producers' following a review of this component of the legislation. Following the receipt of the application from Santos Direct, it has been noted that there is an anomaly in GI Act at section 128 that is being addressed in the Spring 2004 Session of the Parliament of Victoria.
24. Prior to the amendment to the legislation, and in particular section 128, a significant producer (in this case, a related company of Santos Direct) could not also hold a retail licence unless the customers used in excess of 500,000 GJs per annum. By removing the test under the previous section 128(2)(a)(ii), a significant producer cannot hold any retail licence.
25. In order to address this matter pending further amendment to the GI Act, the Commission, using its powers under section 128(2)(a)(ii) of the GI Act will publish a Notice in the Government Gazette that declares that Santos Direct does not have a prohibited interest. The notice expires after 6 months in accordance with the legislation.

Compliance with Codes and Rules

26. Santos Direct, as a major retailer of gas, has met all of the prerequisites of any applicable codes or guidelines.

DECISION

27. 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.
28. 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 Santos Direct Pty Ltd ABN 62 108 846 288. A copy of the licence forms an attachment to this decision;

- in accordance with section 130 of the Gas Industry Act 2001, publish a Notice in the Government Gazette that states that for a period of 6 months from the date of this decision, Santos Direct Pty Ltd does not have a prohibited interest.

THE COMMON SEAL of)
THE ESSENTIAL SERVICES)
COMMISSION)
 was affixed pursuant)
 to the authority of the Commission on)
 29 September 2004.)

JOHN C TAMBLYN
Chairperson