



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

**CLICK ENERGY PTY LTD
(ABN 41 116 567 492)**

NOTICE OF DECISION

21 June 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 Click Energy Pty Ltd (ABN 41 116 567 492) (**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 7 March 2006, Click Energy Pty Ltd submitted an application for a licence to retail electricity in Victoria. The applicant is a newly incorporated company limited by shares and first registered with the Australian Securities and Investment Commission (**ASIC**) on 7 October 2005.
5. Click Energy Pty Ltd is established for the sole purpose of retailing electricity to residential consumers with consumption of electricity less than 160 MWh per annum.
6. Information provided by the applicant demonstrates that its directors have considerable experience in the conduct of operating and managing a business and demonstrated knowledge of the Australian energy market.

The application

7. By letter dated 7 March 2006, the applicant submitted an application to the Commission for a licence to sell electricity in Victoria. The application included detailed and comprehensive 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 the EI Act, details of the applicant's background, various commercial agreements with third parties (including energy trading arrangements) and a financial model demonstrating its ability to remain financially viable. In particular, as prescribed under section 19(2) of the EI Act, the applicant also set out in details its financial viability and technical capacity.

Advertising the application

8. 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.
9. A notice was placed in *The Age* newspaper on Thursday 23 March 2006. 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 20 April 2006. The Commission received no formal inquiries or submissions.

Express invitations to submit

10. By email dated 23 March 2006, 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. The Commission received no formal submissions.

Provisions relating to the Commission's decision

11. 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 the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the provisions of the EI and the ESC Acts.
12. 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 Click Energy Pty Ltd (ABN 41 116 567 492).

ISSUES

Financial viability

13. 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 intention to apply for registration as a market 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 to sustain a retail electricity business in Victoria
 - it is aware of the risks associate with purchasing electricity and has developed a strategy for managing its risks
 - it can meets its obligation under the stipulated Use of System Agreements and has commenced discussions with distribution companies
14. 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.
15. 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 Click Energy Pty Ltd (ABN 41 116 567 492) can be considered to be financially viable.

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 Directors have considerable experience in the Australian energy industry.
18. The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that Click Energy Pty Ltd (ABN 41 116 567 492), has the technical capacity to comply with the proposed licence conditions. Interviews, documentation and regular communications with key personnel have confirmed that Click Energy Pty Ltd (ABN 41 116 567 492) has acquired a comprehensive knowledge of the Commission's Codes and Guidelines.
19. The Commission has, however, noted that Click Energy has not finalised some of its outsourcing arrangements and accordingly, the Commission proposes to ensure that the Click Energy does not commence trading until the Commission is satisfied all of its contracts with external parties are in place. The Commission will also impose an additional condition to its retail licence to ensure that Click Energy satisfies on going technical capacity requirements through regular reporting to the Commission.

Compliance with Codes and Rules

20. 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.
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 Click Energy Pty Ltd ABN 41 116 567 492 –

- 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.

The Commission has, however, noted that Click Energy has not finalised some of its outsourcing arrangements and accordingly, the Commission has added the following additional condition to its retail licence:

the licensee must, from time to time, in a manner and form determined by the Commission, provide to the Commission details of the licensee's technical and other capacity to continue its operations by this licence;

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 Click Energy Pty Ltd (ABN 41 116 567 492). 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)
_____2006.)

GREG WILSON
Chairperson