



ELECTRICITY INDUSTRY ACT 2000

NEW GENERATING FACILITY

DETERMINATION

October 2002

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PURPOSE AND REASONS FOR THIS DETERMINATION

Laverton North Power Pty Ltd ACN 094 248 156 (LNP) has applied for an electricity generation licence in Victoria in relation to a proposed 270 MW generation facility at Laverton North. LNP is a subsidiary of Singapore Power International (SPI). SPI also owns 100% interest in SPI PowerNet ACN 079 798 173, a body corporate, which holds an electricity transmission licence in Victoria. It is possible that the issue of such a generation licence might result in a breach of the cross-ownership restrictions in the Victorian *Electricity Industry Act 2000* ("EI Act"). Pursuant to those restrictions, a person is prohibited from holding a controlling interest in one or more other licensees.

Power to make this determination.

Section 34(1) of the *Essential Services Commission Act 2001* (the ESC Act) provides that the Commission may exercise such powers (including the power to make determinations) with respect to, amongst other things, economic regulatory matters as may be conferred on the Commission by empowering instruments (which would include the EI Act).

Section 68(8A)(a) of the EI Act empowers the Commission to determine that it is satisfied that a generation company has established, or proposes to establish, a new facility for the generation of electricity for supply or sale.

The making of such a determination, subject to the fulfilment of certain other conditions under section 68(8A), would exempt the person holding an interest in the generation company and another licensed company from the cross-ownership provisions under the EI Act.

Purpose of this Determination.

To consider whether the Laverton North Power Station in Laverton North represents a 'new generation facility', to avoid a breach of the EI Act.

Statutory requirements in making the determination

In exercising its powers to regulate electricity, the Commission is required to have regard to the objectives in section 10 of the EI Act and in section 8 of the ESC Act.

The Commission's objectives as set out under section 10 of the EI Act are:

- (a) to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach, between the electricity industry and the gas industry; and
- (b) to promote the development of full retail competition.

The objectives of the Commission under section 8 of the *Essential Services Commission Act 2001* are:

- (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;
 - (vii) To promote consistency in regulation between States and on a national basis.

COMMISSION'S CONSIDERATION OF THE ISSUE

The EI Act does not provide any definition of what constitutes a new generating facility, and therefore the definition of a new generating facility is within the normal meaning of the words.

The Commission is satisfied that the generation facility that LNP intends to establish is new. In arriving at this conclusion the Commission has taken into account a number of considerations. They include the fact that:

- the power station is to be constructed on a site not previously used for electricity generation purposes by the company;
- the generating units to be installed will be brand new;
- the generating units will be used in a new physical environment at Laverton North Power Complex; and
- the power station will provide new generation capacity in the National Electricity Market

The Commission believes that this conclusion is consistent with its statutory objectives, particularly to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services, to facilitate efficiency in regulated industries and the incentive for efficient long-term investment and to facilitate effective competition and promote competitive market conduct.

DETERMINATION

The Commission has determined that it is satisfied that LNP proposes to establish a new facility for the generation of electricity for supply or sale. This determination:

- is made with respect to the generating facility to be established by LNP at Laverton North, as proposed by LNP in its licence application of 6 December 2001; and
- takes effect when written notice of it is served on LNP.

THE COMMON SEAL of THE ESSENTIAL SERVICES COMMISSION

was affixed pursuant to
the authority of the Commission
on 2 October 2002

JOHN C. TAMBLYN
Chairperson