



**GAS INDUSTRY ACT 2001
APPLICATION FOR A RETAIL LICENCE**

**Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228)
trading as the EA-IPR Retail Partnership (ABN 67 269 241 237)**

NOTICE OF DECISION

28 JUNE 2004

SUMMARY

1. Pursuant to provisions of section 25 of the *Gas Industry Act 2001 (GI Act)* the Essential Services Commission (**the Commission**) has granted Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228) trading as the EA-IPR Retail Partnership (ABN 67 269 241 237) (**the applicant**) a licence to sell (retail) gas in Victoria.

BACKGROUND

Requirement to obtain a licence

2. Section 22 of the GI Act provides the following:
 - (1) *A person must not provide services (other than the sale of gas by retail) by means of a distribution pipeline, either as principal or agent, unless the persons –*
 - (a) *is the holder of a licence authorising that person to provide those services; or*
 - (b) *is exempt from the requirements to hold a licence in respect of those services because of an order under section 24. [of the GI Act]*
 - (2) *A person must not engage in the sale of gas by retail, either as principal or agent, unless the person –*
 - (a) *is the holder of a licence authorising the sale of gas by retail; or*
 - (b) *is exempt from the requirement to obtain a licence in respect of the sale of gas because of an Order under section 24. [of the GI Act]*

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

The applicant

4. On 18 April 2005, EnergyAustralia and the International Power Australia group announced a 50:50 partnership to retail electricity and gas in Victoria (and South Australia). The applicant is trading as the EA-IPR Retail Partnership (**the partnership**). The primary parties to the partnership are the holders of various licences with the Commission as follows -
 - EnergyAustralia is the holder of a gas retail licence issued by the Commission on 24 November 1999 and an electricity retail licence issued by the Commission on 1 July 1998
 - International Power Australia is the holder of an electricity retail licence issued by the Commission on 9 July 2004 and is also the holder of generation licences for Hazelwood and Loy Yang B (70 percent), and electricity retail licences issued by the Commission 24 November 1999. EA is a New South Wales-based government business enterprise that retails gas and electricity in New South Wales, Victoria and

South Australia. International Power Australia is a subsidiary of International Power plc a publicly listed and traded corporation on the London Stock Exchange.

5. The Applicant states that it is a partnership comprising the subsidiary of each of Energy Australia (EA) and International Power (Retail) Pty Ltd (IPR); and that the subsidiaries agree to operate as a partnership pursuant to the Partnership Agreement. It is noted that the Partnership Agreement is subject to a number of conditions precedent, including, that the Applicant obtains the approvals it requires to operate as proposed (from the ACCC, the Treasurer under the *Foreign Acquisitions and Takeovers Act 1974* (Cth), from the ESC, and otherwise). Accordingly, the partnership itself is not yet in existence. The partners' obligations to each other do not commence until the conditions precedents are satisfied, or 1 July 2005, whichever is later.
6. Information provided by the applicant demonstrates that its directors and key personnel have had considerable experience in the energy sector in Victoria and elsewhere. In correspondence to the Commission as part of the application process, the applicant states that "*the core capability to operate the business will be transferred to the Partnership from the existing retail energy businesses of EnergyAustralia (EA) and International Power (Retail) Pty Ltd (IPR).*" The Commission has also 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. As noted above, the entities that comprise the partnership have already been licensed and traded in Victoria within the retail energy market. As demonstrated under the terms of a specific agreement, the applicant is able to leverage its operations based in part on the EA retail businesses. This arrangement will be reviewed not before the completion of 6-months of trading.

The application

7. By letter dated 17 May 2005, the applicant submitted an application to the Commission for a licence to retail gas 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 GI Acts, details of the applicant's background, structure, experience and expertise, various commercial agreements, operating capability and skills (including energy trading arrangements) and profiles of key personnel. The Commission's objective as provided at section 18 of the GI Act provides in part the requirement "*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.*"

Advertising the application

8. 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.
9. A notice was placed in *The Age* newspaper on Saturday 21 May 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 by 15 June 2005. The Commission received no inquiries or submissions.

Express invitations to submit

10. By letter dated 20 May 2005 the Commission wrote to each 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.
11. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

Provisions relating to the Commission's decision

12. Section 26(1) of the GI Act provides that the Commission may grant or refuse the application 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 (ESC Act)*.
13. 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
14. 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.

15. 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

- 16. 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.
- 17. 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.
- 18. The granting of a licence to the applicant to retail gas to customers will satisfy the Commission's overall objective of protecting 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

- 19. 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.

Financial viability

- 20. As announced jointly and publicly by EA and IPR, each entity has contributed capital to the joint venture partnership and accordingly, the applicant has sufficient financial resources to operate and conduct a retail business in Victoria.

Compliance with Codes and Rules

- 21. The applicant has met all of the prerequisites of the applicable codes or guidelines.

DECISION

22. 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.
23. 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 Energy Australia Pty Ltd (ABN 24 070 374 293) and IPower Pty Ltd (ACN 111 267 228) trading as the EA-IPR Retail Partnership (ABN 67 269 241 237)
24. 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)
28 June 2005.)

JOHN C TAMBLYN
Chairperson