



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

**MOMENTUM ENERGY PTY LTD
(ACN 100 569 159)**

NOTICE OF DECISION

14 JANUARY 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 Momentum Energy Pty Ltd (Momentum) ACN 100 569 159 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; and
 - (d) to sell electricity.

The applicant

4. The applicant, Momentum, is a company incorporated under the *Corporations Act 2001* (Cwlth). The applicant was incorporated under the *Corporations Act 2001* (Cwlth) on 8 July 2002 specifically for the purpose of retailing electricity in Victoria.
5. Information provided by the applicant demonstrates that its directors and key personnel have a number of years experience in the privatised energy sector in New Zealand, and Momentum proposes to leverage this knowledge and experience in the Victoria market.

The application

6. By letter dated 14 November 2003, 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 Acts, details of the applicant's background, structure, experience and expertise, 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 has set out in detail its financial viability and technical capacity.

Advertising the application

7. 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.
8. A notice was placed in *The Age* newspaper on Saturday 22 November 2003. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from Momentum by the close of business on by 22 December 2003. The Commission received no inquiries or submissions.

Express invitations to submit

9. By letter dated 21 November 2003 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.
10. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

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 any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and under the ESC Act.
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 this 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

13. 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.

14. Accordingly, consistent with its objectives under the provisions of both the EI Act and the ESC Act, the Commission has granted a licence to Momentum.

ISSUES

Technical capacity

15. 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.
16. Momentum 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 and communications sectors in fully contestable markets in New Zealand for a number of years in various capacities and positions. Momentum has spent some 3 years researching the energy sector, and in particular, the retailing of electricity, prior to submitting an application to the Commission.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that Momentum has the technical capacity to comply with the proposed licence conditions.

Financial viability

17. The applicant must demonstrate its financial viability under the provisions of section 19(3) of the EI Act. 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, Momentum, has confirmed that –
 - an application has been submitted pursuant to Part 7 of the *Corporations Act 2001* for a Financial Services licence to be issued by the Australian and Securities and Investments Commission (ASIC). This licence test imposes a number of comprehensive prudential tests to determine an entity's financial viability; and
 - the prudential requirements have been satisfied in order to accommodate a "Use of System Agreement" with a licensed electricity distributor.

Notwithstanding the above, the Commission has applied its standard assessment of financial viability to the applicant. The financial viability tests includes amongst other things the applicant's financial position, 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 that the applicant has satisfied the financial test and Momentum can be considered to be financially viable.

Compliance with Codes and Rules

18. 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 developed dealing with retailers' market conduct.
19. 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

20. The Commission is satisfied that Momentum-
 - 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
 - the granting of a licence is not inconsistent with the EI Act.
21. 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 Momentum Energy Pty Ltd (ACN 100 569 159).