

Mr. N. Thodos
Director
Click Energy Pty Ltd
1A Yarra Street
South Yarra 3141

7 March 2006

Mr. Richard Bunting
Manager Licensing
Essential Services Commission
Level 1
35 Spring Street
Melbourne 3000

Dear Mr. Bunting,

APPLICATION FOR AN ELECTRICITY RETAIL LICENCE

The following is an application by Click Energy Pty Ltd ("Click Energy") for an electricity retail licence pursuant to section 18(1)(d) of the *Electricity Industry Act* 2000 ("*EI Act*").

The Directors of Click Energy are of the opinion that Click Energy has the prescribed technical capacity and the prerequisite financial viability to be an electricity retailer in Victoria.

The granting of an electricity retail licence will be consistent with the Essential Services Commission's ("Commission") objectives under section 10 of the *EI Act* and section 8 of the *Essential Services Commission Act* 2001 ("*ESC Act*").

I General

Click Energy is a newly incorporated entity that wishes to become an electricity retailer in Victoria. It does not have any existing activities within the electricity industry nor does it have any activities outside the electricity industry.

Click Energy plans to enter the sub-160MWh electricity market. The Directors believe that there is an opportunity to offer a unique suite of electricity products and services that are commercially attractive to residential customers.

II The Commission's objectives

The Directors of Click Energy believe that this application satisfies section 10 of the *EI Act* and section 8 of the *ESC Act*.

We comment specifically, as follows:

To promote a consistent regulatory approach between the electricity industry and the gas industry:

The granting of a retail licence to Click Energy will be neutral with respect to this objective.

To promote the development of full retail competition:

The entry of Click Energy into the Victorian electricity market will further increase consumer choice and further promote competition between electricity retailers.

To protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services:

It is the view of Click Energy that in order to ensure the long-term interest of Victorian consumers the entry into the Victorian electricity market of an optimal number of electricity retailers is to be encouraged. Click Energy makes no comment on what this long-run optimal number would be.

Research undertaken as part of the Click Energy business plan indicates that there is room at the moment in the Victorian electricity market for another electricity retailer.

Click Energy is developing a suite of economically attractive electricity products that incorporate unique customer service.

Click Energy will strictly comply with all legal and regulatory requirements to ensure that there isn't any negative impact on the long-term interests of Victorian consumers. It will comply with the spirit of the "Code Of Conduct For Marketing Retail Energy In Victoria, October 2004", "Guideline No. 10: Confidentiality And Informed Consent – Electricity And Gas, May 2002" and "Guideline No. 19: Energy Product Disclosure – December 2005" in its dealings with its customers and the public.

To facilitate efficiency in regulated industries and the incentive for efficient long-term investment:

As mentioned above, the entry into the Victorian electricity market of an optimal number of electricity retailers each competing for market share should be encouraged.

The entry of Click Energy would further the aim of an efficient regulated industry. It would exert market pressure on the existing industry participants and

encourage them to become more competitive and in turn efficient or risk losing market share.

To facilitate the financial viability of regulated industries:

The financial viability of a regulated industry, as any other industry, can be positively or negatively affected by the introduction of a new participant.

Based on research, the Directors of Click Energy believe that the entry of Click Energy into the Victorian electricity market will have an overall positive affect on the industry. Click Energy is a small participant that should not materially affect the economic position of the other participants. To the extent that other participants lose market share this is the nature of competition. To the extent that they improve product offerings to maintain market share this is one of the purposes that the Commission is aiming to encourage.

To ensure that the misuse of monopoly or non-transitory market power is prevented:

One of the main reasons that the privatisation of the Victorian electricity industry has been judged to be a success is the integral part that the introduction of competition has played in the privatisation. The existence of Click Energy will, in a small way, ensure that there will be another independent electricity retailer to continue that theme in the Victorian market.

To facilitate effective competition and promote competitive market conduct:

The facilitation of effective competition and the promotion of competitive market conduct should not be defined as relating to price alone. It should be assessed by reference to all parts of the retail electricity market. The entry of a new retailer should have a positive affect on competition. Similarly, the provision by Click Energy of economically attractive electricity products that incorporate unique customer service should further this objective.

To ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry:

Click Energy will comply with all health, safety, environment and social legislation applying to the industry. It is totally committed to a safe and healthy workplace. It will have a strong culture of compliance in all areas and will comply with the spirit as well as the letter of the law.

To ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency:

Benefits from the gains from competition and efficiency flow to all customers, including low-income and vulnerable customers. This competition has meant that in the last ten years the cost of electricity has fallen 2% in real terms (Essential Services Commission, “2004 Performance Report – Energy Retail”).

Click Energy appreciates that access to electricity is primarily a function of affordability. Click Energy has paid attention to the “Energy Retail Code, August 2004” and, in particular, ‘Part 3 – Credit Management’ and ‘Part 4 – Disconnection’. It is hoped that these procedures assist low-income and vulnerable customers in further sharing in the benefits of competition.

To promote consistency in regulation between States and on a national basis:

The granting of a retail licence to Click Energy will be neutral with respect to this objective.

III Technical capacity

Click Energy wishes to commence trading within the next 12 months.

Directors

The two directors of Click Energy are Pieter Double and Nick Thodos.

Together the Directors have the prerequisite industry and commercial experience to operate a retail electricity business.

Pieter Double

Pieter Double will be primarily responsible for Sales and Marketing and the Operational capabilities of Click Energy.

Pieter Double has spent 7 years in the energy sector in Sales and Marketing, initially at Eastern Energy and subsequently at TXU (now TRUenergy). He started as a Key Account Sales Manager in the “I&C” sales team. In 2001 he was appointed Victorian Acquisition Marketing Manager. He was subsequently promoted to South Australian Retail Manager. In between 2001 and 2004, in these two roles, he gained significant sales and marketing experience and was directly responsible for the campaigns and the teams. In South Australia he established TXU’s retail presence in the electricity and gas markets. His day-to-day responsibilities included public relations, sponsorship, product development, sales channels and marketing functions.

He holds a Bachelor of Commerce majoring in marketing, economics and accounting from the University of Auckland and has recently graduated with a Master of Business Administration (Executive) from the Australian Graduate School of Management (AGSM), the combined business school of the University of Sydney and the University of New South Wales, where he undertook research on the retail energy sector.

Nick Thodos

Nick Thodos will be primarily responsible for the regulatory, legal and compliance, and financial aspects of Click Energy.

A banking and finance lawyer by profession, Nick Thodos undertook his articles at Clayton Utz in Melbourne in 1992 and then worked for the Australian Bankers' Association for two years in finance policy. At Baker & McKenzie in between 1995-1998, amongst other matters, he structured and negotiated international cross-border transactions for financial institutions and borrowers; acted on the sale of businesses; worked on structured financial products, Internet banking and electronic commerce; and managed the implementation of a bank's new IT system. In 1999-2000 and 2001-2002, as the Senior Corporate Lawyer at the HSBC Building Society, he was jointly responsible for the securitisation of \$500 million of personal loans. In recent years he has, amongst other things, directly managed a commercial property portfolio attending to day-to-day dealings with tenants, agents, trades people, architects, councils and banks.

In the electricity industry, he has advised electricity companies on finance and regulatory aspects, and was seconded to Baker & McKenzie's Kazakhstan office where he managed a team advising the AES Corporation (USA) on the project financing of six power stations. He has extensive knowledge of the legislative and regulatory requirements that affect Click Energy. In particular, his involvement ensures that Click Energy will have the capacity to comply with the laws, Codes and Guidelines relevant to its licence.

Nick Thodos holds a Bachelor of Economics and a Bachelor of Laws from Monash University, a Master of Laws from the University of Melbourne with a focus on debt and equity financing, and a Master of Business Administration from the University of Oxford where he focused on entrepreneurship and start-up enterprises. He is admitted as a Barrister and Solicitor of the Supreme Court of Victoria.

Company Staff

Information about the Company's staffing is included in Schedule 2.

External Staff and Resources

The Directors have designed a business model that utilises both the skills of the Company and also the skills of external resources. Where the Directors have the experience and skills to ensure that Click Energy is competitive (e.g., sales and marketing) those functions will be performed by the Company directly. Where functions can be best undertaken by another entity those functions will be delegated to an expert in the area.

The rationale of this approach is twofold. First, it ensures that the Company is providing the best possible service to customers and that the systems are in place to grow the business with confidence. Secondly, it ensures a stronger financial position because capital is preserved and economies of scale can be captured from a much earlier stage in the life of the Company.

The Company intends to form a close contractual relationship with a service provider that would manage the Company's billing and servicing obligations. The Company has undertaken a lengthy research process in identifying parties in the industry that can competently and competitively undertake these tasks.

As a result of research the Company's preferred service provider is [\[removed upon Click Energy's request\]](#)

The Directors of Click Energy are aware that the Company is relying on external entities to satisfy elements of the Commissions' "Technical Capacity" test. The Directors therefore undertake to the Commission that should there be a change in circumstances such that the Company's capacity as set out in this application is fundamentally or significantly affected – especially in the period after the issue by the Commission of an electricity retail licence to the Company and prior to the execution of contracts – the Company will not commence to sell or offer to sell electricity until the issues are adequately addressed and rectified and it is confident that all elements of the Commissions' "Technical Capacity" are satisfied. Furthermore, the Directors undertake to keep the Commission informed on any material changes to any outsourced arrangements relating to "Technical Capacity".

A summary of all relevant information including the relevant entities' experience in and knowledge of the electricity industry is included in Schedule 2.

The National Electricity Rules

Click Energy will apply to be a "market customer" in the National Electricity Market. It has the capacity to comply with the relevant provisions of the National Electricity Rules.

A summary of information relating to the National Electricity Rules is included in Schedule 2.

Capacity to operate a retail business

The Directors of Click Energy have the prerequisite industry and commercial experience to operate a retail electricity business.

While the core functions of the business will be the responsibility of the Directors, qualified energy industry staff will be employed to ensure that customers are treated with the utmost professionalism and that the business is successful.

Managing supplier contracts

Click Energy will not purchase, or offer to sell, electricity in any way until the receipt of its retail electricity licence. Information concerning the Company's capacity to manage risks associated with the purchase of electricity is provided in Schedule 2. The Company is confident that it has the ability to put in place adequate risk management processes. Nick Thodos has knowledge and experience of derivatives law and practice and, amongst other things, has published a refereed article on the operation of hedges and swaps in the *Journal of Banking and Finance Law and Practice*.

One of the most significant issues for Click Energy is the level of credit support required by the distribution companies. The Company is aware of the Commission's "Retailer DUoS Credit Support Review Issues Paper" of January 2006 and agrees with the view contained therein that the current requirements of the Use of System Agreements can restrict the ability of small retailers to compete in the electricity market in Victoria. While Click Energy supports reform of the current arrangements, it is confident that it has the financial capacity to meet its obligations under the stipulated Use of System Agreements at the current prescribed levels. The Company has corresponded with each of the five distribution companies for provision of network services. After receipt of its retail electricity licence, the Company will have further discussions with the distribution companies to ensure that the stipulated amounts do not become unnecessarily onerous. The Company will not commence retail operations in a distribution company's area until it has executed a Use of System Agreement with that company.

Click Energy has the capacity to account for and settle energy purchases and network service charges. The Company will be invoiced directly by the relevant parties based on official NEMMCO information. The Company will rely on its billing system to verify the quantity of electricity used. It will further implement a system of random checks to ensure that energy purchases and network service charges are not being overstated.

As Click Energy only plans to enter the sub-160MWh electricity market, meter services and meter data will be provided by the distribution companies. Meter data will be stored in Click Energy's billing system.

Managing customer contracts

The Directors have a working knowledge of the laws, Codes and Guidelines that affect electricity customer contracts. This includes the state and federal fair trading laws and the Energy Retail Code.

Click Energy will offer services to relevant customers and potential relevant customers that are in line with the Energy Retail Code. Click Energy acknowledges that where service offerings to relevant customers differ from standards established under the Energy Retail Code clear statements of the differences will be provided. Similarly, service offerings to customers that are not relevant customers will clearly set out the customer's and retailer's rights and obligations and comply with the requirements of state and federal fair trading laws.

Customer account establishment & management

Customer accounts will be established and customer history and information will be maintained on the Company's billing system.

At the establishment of an account the Company will have the ability to perform a credit check on the customer. During the life of the customer's account the Company will, using B2B industry standards, communicate with the relevant distribution company to advise on all relevant customer information including information relating to the establishment of an account and the closure of an account.

The Company will have the ability to read a customer's meter and bill that customer within 36 hours of receiving customer advice of transfer or closure of the account.

Customer service provision

A call centre will handle correspondence from and communications with customers and potential customers.

All correspondence and communications, including complaints and disputes, will be handled in accordance with Australian best practice standards. If a complaint or dispute can not be adequately handled or promptly resolved by a call centre staff member that complaint or dispute will be directly referred to one of the Directors. Due to prior experience the responsible director will be Nick Thodos. While at the Australian Bankers' Association, he was involved in the drafting of

the *Code of Banking Practice*, which sets out the obligations of banks in Australia including the need to refer disputes to a dispute resolution scheme, and had dealings with the Australian Banking Industry Ombudsman that operated the banking industry's dispute resolution scheme.

Click Energy will participate in the Energy and Water Ombudsman Scheme ("EWOV"). The Company has had preliminary discussions with EWOV.

Billing and collection

Click Energy has the necessary systems to bill customers for electricity consumed and to collect the outstanding amounts.

With respect to payment difficulties and unpaid debts, Click Energy will comply with 'Part 3 – Credit Management' and 'Part 4 – Disconnection' of the "Energy Retail Code, August 2004".

Appropriate management systems

The Company undertakes to maintain a general ledger, accounts payable and accounts receivable systems, and a billing and settlement system.

Capacity to comply with regulatory requirements

The Directors of Click Energy have the academic qualifications and professional experience to comply with all the laws, Codes and Guidelines that directly or indirectly affect the Victorian electricity market. These include but are not limited to:

- Electricity Distribution Code;
- Electricity Customer Metering Code;
- Electricity Customer Transfer Code;
- Energy Retail Code;
- Code of Conduct for Marketing Retail Energy in Victoria;
- National Electricity Code;
- *Electricity Industry Act 2000* (Vic);
- *Essential Services Commission Act 2001* (Vic);
- *Trade Practices Act 1974* (Cth);
- *Fair Trading Act 1999* (Vic);
- *Privacy Act 1988* (Cth);
- *Corporations Act 2001* (Cth);
- *Financial Services Reform Act 2001* (Cth);
- *Payment Systems and Netting Act 1998* (Cth); and
- *Electronic Transactions Act 1999* (Cth).

The Directors have a thorough understanding of the operation of the Victorian electricity market and the procedures that are relevant to the dealings a retailer has with generators, distributors, meter reading and meter data agents, and the Commission.

Provision of information to distributor

The Company will be in continual communication with the distribution companies. As Click Energy will focus primarily on the sub-160MWh market, the level of planning information and the provision of reports the Company will provide to the distribution companies will be limited initially. The Company will though provide the distribution companies with as much information as possible (including, at a minimum, fault information reports).

Meter reading

As Click Energy only plans to enter the sub-160MWh market, meter reading services will be provided by the distribution companies. The Company's systems though can receive meter data from any meter provider in the NEM. Meter reading services will be rendered once every 12 months at a minimum.

Provision of information to customers

Click Energy will provide information to all prospective and existing customers in compliance with the Energy Retail Code, and all other laws and regulations. The information will detail all prescribed information and meet industry best practice standards.

Privacy and confidentiality management

All customer information and data will be maintained in accordance with all the laws, Codes and Guidelines dealing with privacy and confidentiality management.

The Directors of Click Energy have extensive professional experience in privacy law and practice. They will ensure that the Company's systems are configured and its procedures are structured in a manner so that all confidential customer information and data is held securely within the Company's systems, is only accessed by relevant authorized individuals and is only disclosed to third parties with the explicit informed consent of the Company's customers.

Customer information management system

The Company will use an advanced billing or “customer information” system.—is used by other participants in the Victorian electricity market, which has the capacity to store all customer information deemed essential by the Commission.

The billing system will use B2B industry standards to communicate with the distribution companies. The system will assist in verifying the quantity of electricity consumed by the Company’s customers and thus the amount of charges and fees that need to be remitted to the distribution companies.

Management and compliance systems

The Company undertakes to maintain a general ledger, accounts payable data, accounts receivables data, and a billing and settlement system that enables provision of relevant information to the Commission. The Company will be able to undertake compliance audits as required by the Commission.

IV Financial viability

Click Energy is able to demonstrate its ability to operate a financially viable electricity retail operation.

Commercial in Confidence information on the financial viability of Click Energy, including information regarding certain aspects of the Company’s risk management strategies is provided in Schedule 3. Further information about the financial viability of Click Energy will be made available to the Commission on request.

The Company’s corporate plan and its business model ensure that as the company grows and its commercial requirements increase Click Energy has adequate capital at its disposal to meet its obligations.

The Directors of Click Energy believe that Click Energy will be able to satisfy all electricity industry prudential and security requirements. Amongst other commitments, Click Energy will be able to satisfy the current level of the credit support obligations of the “Use of System Agreements” it intends to enter into with distribution businesses.

V Incorporation Details

Click Energy Pty Ltd was incorporated on 7 October 2005.

A copy of Click Energy’s Certificate of Incorporation is attached as Schedule 1.

VI Cross-ownership

Click Energy does not have a controlling or substantial interest in any licensee that has been granted a licence under the *EI Act*.

Click Energy believes that it would comply with the restrictions in Part 3 of the *EI Act* if it were granted a licence.

VII Licence conditions

Click Energy is seeking a standard electricity retail licence. It does not seek any non-standard licence conditions.

VIII Confidentiality

With the exception of information set out in the Schedules and their Appendices, Click Energy agrees to the information provided in this application being made publicly available.

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If you should have any queries please do not hesitate to contact the undersigned.

Yours sincerely,

Nicholas Thodos