



**ELECTRICITY INDUSTRY ACT 2000**  
**APPLICATION FOR TWO GENERATION LICENCES**

**(1) ENERGY PACIFIC (VIC) PTY LTD**  
**ABN 18 063 543 984**  
**&**  
**PACIFIC HYDRO LIMITED**  
**ABN 31 057 279 508**

**&**  
**(2) PACIFIC HYDRO PORTLAND WIND FARM PTY LTD**  
**ABN 75 103 162 474**  
**&**  
**PACIFIC HYDRO LIMITED**  
**ABN 31 057 279 508**

**DECISION**

**6 October 2004**

## SUMMARY

Pursuant to the provisions of section 19 of the *Electricity Industry Act 2000* (**the EI Act**) the Essential Services Commission (the Commission) has decided to grant licences to generate electricity for supply or sale in Victoria to be held jointly by-

- Energy Pacific (Vic) Pty Ltd ABN 18 063 543 984 (**EPV**) and Pacific Hydro Limited (**PHL**) ABN 31 057 279 508 located at Yambuk ; and
- Pacific Hydro Portland Wind Farm Pty Ltd (**PHPWP**) ABN 75 103 162 474 and Pacific Hydro Limited ABN 31 057 279 508 located at Cape Sir William Grant, Cape Nelson and Cape Bridgewater (the applicants).

In accordance with the provisions of section 29(1)(b) of the EI Act, PHL has applied to the Commission to vary its electricity generation licence by way of agreement by deleting from Schedule 1 of the licence the references at *licensed power station* to the generating facilities at Yambuk, Cape Sir William Grant, Cape Nelson and Cape Bridgewater. These generating facilities are to be incorporated in the new generation licences as cited above by joint ventures established by PHL and beneficially owned and controlled entities.

## BACKGROUND

### Requirement to obtain a licence

1. Section 16 of the EI Act provides that a person must not engage in the generation 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.
2. The applicants have not been exempted from the requirement to obtain a licence.

### 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 as specified in the licence -
  - (a) to generate electricity for supply or sale;
  - (b) to transmit electricity;
  - (c) to distribute or supply electricity; or
  - (d) to sell electricity.

### **The applicants**

4. The applicants for the two licences are -
  - (a) Energy Pacific (Vic) Pty Ltd ABN 18 063 543 984 (**EPV**) and Pacific Hydro Limited (**PHL**) ABN 31 057 279 508 located at Yambuk ; and
  - (b) Pacific Hydro Portland Wind Farm Pty Ltd (**PHPWP**) ABN 75 103 162 474 and Pacific Hydro Limited ABN 31 057 279 508 located at Cape Sir William Grant, Cape Nelson and Cape Bridgewater (the applicants).
5. Both EPV and PHPWP are 100 percent beneficially owned and controlled companies of PHL. EPV and PHPWP have been established by PHL as ‘special purpose vehicles’ to satisfy the external financiers. The Portland Wind Farm Project, which will generate 165 MW using 100 wind turbines, is dedicated toward generating electricity exclusively for the Alcoa Smelter located at Portland. The Yambuk facility that will generate 30 MW using 20 wind turbines and will connect to the grid under a regulated agreement with Powercor and the output sold into the National Electricity Market.
6. Pacific Hydro Limited (PHL) is a public and listed corporation on the Australian Stock Exchange with an estimated market capitalisation of \$400 million. The core business is as a renewable energy generation company.
7. PHL was issued a licence by the Commission on 22 October 2002 for renewable energy projects in Victoria. PHL has hydro-electric projects at Lake Glenmaggie, Lake William Hovell and Eildon Pondage Hydro. The company also has under its control the Codrington Wind Farm, the Challicum Hills Wind Farm and the “Portland Wind Energy Project”, the latter incorporating four proposed sites under development to operate as wind farms at Yambuck, Cape Sir William Grant, Cape Nelson and Cape Bridgewater.
8. On 23 June 2003, the Commission agreed to vary the PHL licence by deleting reference to the Challicum Hills generating facility located at Buangor and to issue a second generating licence to Pacific Hydro Challicum Hills Pty Ltd and PHL. The Challicum Hills Wind Farm comprises 35 wind turbines creating a total capacity of 52.5 MW and is connected to the grid under a regulated agreement with Powercor

### **The application**

9. On 16 August 2004 the applicants formally applied for a licence to generate electricity for supply and sale in Victoria. The applicants provided the Commission with details of each entity’s background, structure, and experience in the energy industry, operating and financial capabilities and profiles of the directors.
10. The application also included a statement of the applicant’s ability to comply with all applicable codes and regulations upon granting of the generation licence.

### **Advertising the application**

11. 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 applications have been lodged and inviting interested persons to make submissions to the Commission in respect of the applications within a period and in a manner specified in the notice.
12. The Commission complied with the requirements of section 19(6) of the EI Act by publishing a notice in *The Age* newspaper on Friday, 20 August 2004. The advertisement invited interested persons to make submissions to the Commission in respect of the applications by the close of business on 13 September 2004.
13. By letter dated 20 August 2004 the Commission wrote to each licensed entity inviting them to make a submission in respect of the applications. Invitations to comment were also sent to the members of the Commission's Customer Consultative Committee and other interested parties.
14. The Commission did not receive any submissions in respect of the applications.

### **Provisions relating to the Commission's decision**

15. Section 19(1) of the EI Act provides that, subject to sub-section (2) the Commission may grant or refuse an application for a generation licence for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and under the *Essential Services Commission Act 2001* (the ESC Act).
16. The objectives specified 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.
17. 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.

18. Section 19(2) of the EI Act provides that the Commission must not grant an application for a generation licence unless the Commission is satisfied that subject to sub-section (4) the applicants have the technical capacity to comply with the conditions of the licence.

Section 19(4) provides that –

*The Commission does not have to be satisfied as to the applicant's technical capacity to comply with the conditions of the licence at the time it is issued if –*

- (a) the activities specified in the licence are not likely to be commenced to be carried out within the next following 12 months; and*
- (b) the application is granted subject to such conditions as are determined by the Commission relating to further approval of the applicant's technical capacity or approval of future facilities necessary for the carrying out of the activities.*

The applicants propose to commence its generation activities under each licence for the within the next 12 months.

## **CONSIDERATION OF THE APPLICATION**

### **General approach**

19. A decision to grant generation licences to a new market entrant has the potential to promote competition in the generation, supply and sale of electricity and, accordingly, to promote efficiency and economy in those activities.
20. Accordingly, consistent with its objectives under the ESC Act and the requirements of the EI 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 licences 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 EI Act.

21. The granting of licences to (1) EPV and PHL and (2) PHWFP and PHL to jointly own and operate Wind Farms at Yambuk and for the Portland Wind Farm Project respectively will satisfy the Commission's overall objective of protecting the long term the long term interests of Victorian consumers with regard to the price of electricity through facilitating effective competition and promoting competitive market conduct.

## **ISSUES**

### **Technical capacity**

22. The applicants have provided particulars in the application of their technical capacity to comply with the conditions of the licence. The applicants have significant experience in the development and operation of renewable energy projects in Australia, South America and South-East Asia. At present, PHL is responsible for the operation of renewable energy projects using hydro and wind generation throughout Australia and is extensively involved in renewable energy projects in South East Asia, notably the Philippines and Fiji, and Chile.
23. The Wind Farms will be constructed using a single turn-key contractor, NEG Micon from Denmark and under the supervision of PHL. The projects will be operated and maintained by NEG Micon for a period of two years following construction to ensure that warranty performance obligations are met. NEG Micon is a Danish based company with expertise in constructing and operating wind farms. Following completion of the two year warranty period, responsibility for the operation and maintenance will revert to the applicant. The information provided in the applications indicates that the directors of the applicant companies and the key personnel have significant energy industry experience.
24. PHL is familiar with the operation of the National Electricity Code through the operation of its existing facilities and its registration with NEMMCO

### **Cross-ownership**

25. Section 68(1) of the EI Act provides that is unlawful to hold a prohibited interest. Section 68(2) of the legislation provides that, subject to sub-sections (8) and (8A), a person holds a prohibited interest if a licensee has a controlling interest in one or more other licences.
26. The Commission does not consider that that the applicants do not hold a prohibited interest. By virtue of section 69(9) of the EI Act, PHL and its other joint venture partners have not acquired any additional interests outside the existing operations, which is the intent of this section. In essence, PHL is re-arranged its corporate structures. The Commission is satisfied therefore that issuing a licence to PHL as joint applicant would not result in PHL holding a prohibited interest and it is therefore not required to make a determination.

### Compliance with Codes and Rules

26. Victorian electricity generation licences require licensees to comply with all applicable provisions of the Distribution Code and the System Code. The Commission notes that generation licences also include a requirement to comply with all relevant laws, and that issuing this licence would not relieve the applicant of the obligation to meet the Environmental Protection Authority's emissions and other requirements.

### DECISION

27. The Commission is satisfied that -

- the applicants have the technical capacity to comply with the conditions of the licence to be granted; and
- the granting of licences would not be inconsistent with the EI Act.

28. Having regard to the objectives specified in section 10 of the *Electricity Industry Act 2000* and section 8 of the *Essential Services Commission Act 2001*, the Commission has decided -

- to grant the applications for the issue of generation licences to (1) Energy Pacific (Vic) Pty Ltd ABN 18 063 543 984 (**EPV**) and Pacific Hydro Limited (**PHL**) ABN 31 057 279 508 located at Yambuk; and (2) Pacific Hydro Portland Wind Farm Pty Ltd (**PHPWP**) ABN 75 103 162 474 and Pacific Hydro Limited ABN 31 057 279 508 located at Cape Sir William Grant, Cape Nelson and Cape Bridgewater. A copy of the licence forms an attachment to this decision.
- in accordance with the provisions of section 29(1)(b) of the EI Act, to approve the variation by agreement to delete references at Schedule 1 of the PHL licence to the "licensed power stations" located at Yambuk, and the Portland Wind Farm Project - sites located at Cape Sir William Grant, Cape Nelson and Cape Bridgewater.

**THE COMMON SEAL of** )  
**THE ESSENTIAL SERVICES** )  
**COMMISSION** )  
 was affixed pursuant )  
 to the authority of the Commission on )  
 6 October 2004. )

JOHN C TAMBLYN  
**Chairperson**