



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

**ENERGY ONE PTY LTD
(ABN 37 076 583 018)**

NOTICE OF DECISION

22 March 2006

SUMMARY

1. Pursuant to provisions of section 19 of the *Electricity Industry Act 2000* (**EI Act**) the Essential Services Commission (**the Commission**) has granted Energy One Pty Ltd (ABN 37 076 583 018) (**the applicant**) 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;
 - (d) to sell electricity.

The applicant

4. On 29 November 2005, Energy One Pty Ltd submitted an application for a licence to retail electricity in Victoria. The applicant is an incorporated corporation limited by shares and first registered with the Australian Securities and Investment Commission (**ASIC**) on 28 November 1996 under the name of Ferrier Hodgson Electricity Pty Ltd. On 15 June 2005, the entity changed its name with ASIC to its current name, Energy One Pty Ltd. Energy One Pty Ltd is the holder of electricity retail licences in the following jurisdictions:
 - New South Wales – Retail electricity licence - June 1997
 - ACT – Retail electricity licence – February 2000
 - Queensland – Retail electricity licence – February 2000
5. Energy One Pty Ltd was established for the sole purpose of retailing electricity.
6. Information provided by the applicant demonstrates that its directors and key personnel have considerable experience in the conduct of operating and managing a business and demonstrated knowledge of the energy sector in the jurisdictions New South Wales, Queensland and the Australian Capital Territory (**ACT**) and elsewhere. In correspondence to the Commission as part of the application process, the applicant states that its target market is the small to medium enterprises that purchase less than 160 MWh per annum. The applicant is seeking to market and retail electricity to its customers who operate in more than one of the jurisdictions of New South Wales, Queensland, ACT and Victoria for the purposes of providing consistency across the jurisdictions. This niche marketing approach follows qualitative market research with its customers in the jurisdictions where it holds licences and their desire to extend that arrangement to Victoria.

The process is based around customer loyalty, customer service and passing on operational efficiencies in the form of cost savings to customers.

7. 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. The applicant is able to leverage its operations located in New South Wales.

The application

6. By letter dated 29 November 2005, the applicant submitted an application to the Commission for a licence to sell electricity in Victoria and also later provided the Commission with detailed and comprehensive 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 Act)* and the EI Act, details of the applicant's background, corporate and operational structure, experience and expertise, various commercial agreements with third parties, operating capability and skills (including energy trading arrangements), profiles of key personnel and a detailed appraisal of its financial viability. In particular, as prescribed at section 19(2) of the EI Act, the applicant has also set out in details 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 Friday 27 January 2006. 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 24 February 2006. The Commission received no inquiries or submissions.

Express invitations to submit

9. By letter dated 27 January 2006, the Commission wrote to each current licensee inviting them to make a submission in respect of the application. Invitations were also sent to various interested parties.
12. The Commission did not receive any submissions from licensees or interested parties in respect of the application.

Provisions relating to the Commission's decision

13. 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 provisions of the EI and the ESC Acts.
14. As previously noted, Section 19(2) of the EI Act provides that the Commission must not grant an application for a retail licence unless the 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

15. 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. Accordingly, consistent with its objectives under the provisions of both the EI Act and the ESC Act, the Commission has granted a licence to Energy One Pty Ltd (ABN 37 076 583 018).

ISSUES

Technical capacity

16. 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.
17. The applicant provided particulars in its application of its technical capacity to comply with the conditions of the licence. The applicant's key personnel have been involved in the Australian energy market, most notably in New South Wales, Queensland and the ACT for a period totalling eight years.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that Energy One Pty Ltd (ABN 37 076 583 018), has the technical capacity to comply with the proposed licence conditions. Interviews, documentation and regular communications with key personnel have confirmed that Energy One Pty Ltd (ABN 37 076 583 018) has acquired a comprehensive knowledge of the Commission's Codes and Guidelines.

Financial viability

18. The applicant must demonstrate its financial viability under the provisions of section 19(2) (a) of the EI Act. Section 19(3) of the EI Act provides that the Commission does not have to be satisfied as to the financial viability if an applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements. Accordingly, 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 has confirmed that –
- the applicant has sufficient financial resources to sustain a retail electricity business in Victoria
 - the applicant is already registered with and satisfied the prudential requirements of NEMMCO for the purposes of trading in other jurisdictions

- the prudential requirements have been satisfactorily negotiated for “Use of System Agreement” and approved in principle involving licensed electricity distributors, and these arrangements will be finalised upon the Commission granting a retail licence.

Considering the information provided and notwithstanding the provisions of section 19(3) of the EI Act, the Commission has applied its standard assessment of financial viability to the applicant. The Commission required the applicant to provide evidence of its financial viability. The process requires, amongst other things, for the applicant to outline its financial position, and provide data concerning its business plans, 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 for the purpose of this application for the granting of a licence to retail electricity, and for no other purpose, that the applicant, at the time of the consideration of the application, has satisfied the financial test and Energy One Pty Ltd (ABN 37 076 583 018) can be considered to be financially viable.

Compliance with Codes and Rules

19. 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 Energy Retail Code and any other relevant code dealing with retailers’ market conduct.
20. 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

22. The Commission is satisfied that Energy One Pty Ltd (ABN 37 076 583 018)-
 - 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 that

the granting of a licence is not inconsistent with the EI Act.

23. 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 Energy One Pty Ltd (ABN 37 076 583 018). 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)
22 March 2006.)

GREG WILSON
Chairperson