



GAS INDUSTRY ACT 2001

APPLICATION FOR A RETAIL LICENCE

RED ENERGY PTY LIMITED
(ABN 60 107 479 372)

NOTICE OF DECISION

15 November 2006

SUMMARY

1. Pursuant to provisions of section 25 of the *Gas Industry Act 2001* (**GI Act**) the Essential Services Commission (**the Commission**) has granted Red Energy Pty Limited (ABN 60 107 479 372) (**Red Energy**) a licence to sell gas in Victoria.

BACKGROUND

Requirement to obtain a licence

2. Section 22(2) of the GI Act provides that a person must not engage in the sale of gas unless the person is -
 - the holder of a licence authorising the sale of gas by retail or
 - exempted from the requirement to obtain a licence in respect of the sale of gas by retail.

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 authorising one or more of the following activities:
 - (a) providing services by means of a distribution pipeline or
 - (b) selling gas by retail.

The applicant

4. On 12 September 2006, Red Energy submitted an application for a licence to retail gas in Victoria. Red Energy currently holds a licence, which was granted in June 2004, to retail electricity in Victoria.
5. As it is already operating in the Australian energy market, the senior management team within Red Energy has experience operating and managing an energy retail business. Red Energy now proposes to retail gas so that it can offer dual fuel to its existing customers. Red Energy has advised that it will not actively pursue stand alone gas customers.

The application

6. By letter dated 16 September 2006, Red Energy submitted an application to the Commission for a licence to sell gas in Victoria. The application included detailed and comprehensive attachments, some of which were marked '*commercial 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 GI Act, and details of Red Energy's background, current retail operations, current organisational structure, compliance policy and gas business plan. Red Energy also provided evidence of its financial viability

Advertising the application

7. 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.
8. A notice was placed in *The Age* newspaper on 22 September 2006. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from Red Energy by the close of business on 6 October 2006. The Commission received no inquiries or submissions.

Express invitations to submit

9. By email dated 21 September 2006, the Commission wrote to each current licensee and other interested parties inviting them to make a submission in respect of the application. The Commission received no submissions.

Provisions relating to the Commission's decision

10. Section 26(1) of the GI Act provides that the Commission may grant or refuse the application for the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the provisions of the GI Act and the ESC Act. This provides the Commission with powers to consider financial viability and technical capacity. The Commission's approach to assessing financial viability and technical capacity is set out in the Commission's *Guidance Notes for Applications for Gas Licences and the Transfer of Existing Gas Licences*.

CONSIDERATION OF THE APPLICATION

Financial viability

11. The criterion of financial viability relates to an applicant's ability to establish a sustainable business able to satisfy the interests of consumers. Red Energy has provided sufficient information in the application to demonstrate that it meets this criterion.
12. Red Energy has the financial resources to establish and maintain a gas retail business. As a wholly owned subsidiary of Snowy Hydro Limited (ABN 17 090 574 431) (**Snowy Hydro**), Red Energy's business operations are financially supported by Snowy Hydro. Red Energy's financial obligations to third parties are also formally guaranteed by Snowy Hydro through a Deed of Cross Guarantee, which Snowy Hydro is financially able to meet. As at 1 July 2006, Snowy Hydro has consolidated net assets of \$1.3 billion and consolidated profit after income tax expense of \$190.6 million.
13. Red Energy was requested to provide the Commission with its Profit and Loss Statement. However, Snowy Hydro's financial report indicated that Red Energy is not required to prepare and lodge with ASIC a separate audited financial report because Red Energy has entered into a Deed of Cross Guarantee with Snowy Hydro pursuant to ASIC Class Order 98/1418.
14. The Commission has concluded for the purpose of this application for the granting of a licence to retail gas, and for no other purpose, that Red Energy, at the time of the consideration of the application, has satisfied the financial test and that Red Energy can be considered to be financially viable.

Technical capacity

15. Under the technical capacity criterion, the Commission assesses an applicant's capacity to operate and manage a gas retail business, and to comply with the applicable regulatory requirements. Red Energy has provided sufficient information in the application to demonstrate that it can meet this criterion.
16. For instance, Red Energy provided commercial in confidence information that demonstrates that the internal systems, processes and procedures established to manage its electricity retail business are capable of being used to manage its proposed gas retail business.
17. In relation to the capacity to comply with regulatory requirements, Red Energy provided the Commission with a copy of its Compliance Policy for its electricity retail business, which Red Energy has developed based on Australian Standard 3806-2006 and which Red Energy will also apply to its gas retail business after modifications to take into consideration its gas retail obligations. The Red Energy Compliance Policy confirms that there are processes and procedures established to ensure that Red Energy has the capacity to comply with the regulatory requirements.
18. The Commission has applied its standard assessment of technical capacity to Red Energy. The Commission is satisfied that Red Energy has the technical capacity to comply with the proposed licence conditions.

DECISION

19. The Commission is satisfied that Red Energy:
 - is financially viable

- has the technical capacity to comply with the conditions of the licence to be granted and that
- the granting of a licence is not inconsistent with the GI Act.

20. Having regard to the objectives specified in section 18 of the GI Act and section 10 of the ESC Act, the Commission has granted a gas retail licence to Red Energy. The Commission has completed a review of the form and the content of the licence and this was settled at its meeting of 14 March 2007. A copy of the licence is attached to this decision.

THE COMMON SEAL of)
 THE ESSENTIAL SERVICES)
 COMMISSION)
 was affixed pursuant)
 to the authority of the Commission on)
 14 March 2007.)

GREG WILSON
 Chairperson