



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

**VICTORIA ELECTRICITY PTY LTD
(ACN 100 528 327)**

DECISION

21 AUGUST 2002

SUMMARY

1. Pursuant to section 19 of the *Electricity Industry Act 2000* (the EI Act) the Essential Services Commission (the Commission) has decided to grant Victoria Electricity Pty Ltd ACN 100 528 327 (the applicant) a licence to sell electricity in Victoria, otherwise than through the wholesale electricity market.

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.
3. The applicant has not been exempted from the requirement to obtain a licence.

Entitlement to apply for a licence

4. 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

5. The applicant, Victoria Electricity Pty Ltd (ACN 100 528 327), is a company incorporated under the Corporations Law of Victoria.
6. The applicant was established on 12 May 2002 specifically for the purpose of retailing electricity in Victoria.
7. Information provided by the applicant shows that its directors and managers have a number of years experience in the electricity industry in New Zealand.

The application

8. By letter dated 21 May 2002 the applicant formally applied for a licence to sell electricity in Victoria and provided the Commission with attachments in support of the application. The attachments contained details of the applicant's background, structure, experience and expertise, operating capability and skills (including energy trading arrangements) and profiles of directors and key managers. The attachments also included a statement of the applicant's ability to comply with applicable codes and regulations upon the granting of the retail licence.

Advertising the application

9. 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.
10. The Commission met the requirements of section EI 19(6) of the Act by publishing a notice in *The Age* on Monday, 3 June 2002. The advertisement invited interested persons to make submissions to the Commission in respect of the application by 28 June 2000. No enquiries were received in response to the advertisement.

Express invitations to submit

11. By letter dated 3 June 2002 the Commission wrote to each licensed entity inviting them to make a submission in respect of the application.
12. Invitations were also sent to the members of the Commission's Customer Consultative Committee and other interested parties.
13. The Commission did not receive any submissions in respect of the application.

Provisions relating to the Commission's decision

14. 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 *Essential Services Commission Act 2001* (the ESC Act).
15. 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.
16. Section 8 of the ESC Act provides that -
 - (a) In performing its functions and exercising its powers, the primary of 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 on 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;
- (vii) To promote consistency in regulation between States and on a national basis.

17. 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.

Section 19(3) provides that -

The Commission does not have to be satisfied as to the applicant's financial viability, if the applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements.

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.

CONSIDERATION OF THE APPLICATION

General approach

- 18. A decision to grant a retail licence 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.
- 19. Accordingly, consistent with its objectives under the EI Act and the ESC Act, the Commission is of the view that unless there are good reasons to the contrary, its approach should be to grant a licence to an applicant. The principle ground on which the Commission might refuse an application would be to protect the interests of customers.

ISSUES

Technical capacity

20. The degree of technical capacity required to be demonstrated 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. Applicants for a retail licence, for example, which are not involved in the physical supply of electricity, are required to demonstrate a different technical capacity than, say, applicants for a generation licence.
21. It is the applicant's intention to commence its licensing activities immediately upon granting of its licence, consequently under section 19(2)(b) of the EI Act the Commission needs to be satisfied with the applicant's technical capacity to comply the conditions of the licence.
22. The applicant has provided particulars in its application of its technical capacity to comply with the conditions of the licence. The applicant has established systems in its New Zealand operations over a number of years. The applicant advises that it possesses the technical capacity to comply with the National Electricity Code and the terms of the licence. The Commission has applied its standard assessment of technical capacity to the applicant. The applicant has satisfied the tests and consequently can be considered to have the technical capacity to comply with its licence conditions.

Financial viability

23. Section 19(3) of the EI Act provides that the Commission does not have to be satisfied with the financial viability of the licence applicant if the licence includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements. The licence being granted to the applicant does not contain a specific clause requiring compliance with the National Electricity Code.
24. While, the licence does not contain a clause specifically requiring compliance with the National Electricity Code, the applicant has informed the Commission that it has applied for registration as a customer with the National Marketing Management Company (NEMMCO) and will comply with the prudential requirements imposed by NEMMCO. Notwithstanding this the Commission has applied its standard assessment of financial viability to the applicant. The financial viability tests cover the applicant's financial position, management experience and risk management. The applicant has satisfied the tests and its resultant score indicates that the applicant can be considered to be financially viable.

Compliance with Codes and Rules

25. Victorian electricity retail licences require the licensee to comply with all applicable provisions of the Electricity Distribution Code, the Electricity System Code, the Electricity Customer Metering Code, the Electricity Customer Transfer Code, the Electricity Retail Code and any code developed dealing with retailers market conduct.
26. Retail competition for all customers consuming less than 40MWh per year commenced on 13 January 2002. Retailers in the fully contestable market will be required to comply with a framework of minimum retail standards which will apply to some or all customers in the 0 – 160MWh per year tranche.

27. The licence being granted to the applicant contains the licence conditions obliging it to comply with the full retail competition regulatory framework

DECISION

28. The Commission is satisfied that -
- the applicant has the technical capacity to comply with the conditions of the licence to be granted;
 - the applicant has satisfied the financial viability requirements of the EI Act; and
 - the granting of a licence is not inconsistent with the EI Act.
29. 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 decided to grant the application for the issue of an electricity retail licence to Victoria Electricity Pty Ltd (ACN 100 528 327). 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 21 August 2002.

JOHN C TAMBLYN
Chairperson