



GAS INDUSTRY ACT 2001

APPLICATION FOR A RETAIL LICENCE

**ENERGYAUSTRALIA
(ABN 37 505 337 385)**

NOTICE OF DECISION

11 June 2008

1) SUMMARY

Pursuant to provisions of section 25 of the *Gas Industry Act 2001 (GI Act)* the Essential Services Commission (the Commission) has granted EnergyAustralia (ABN 37 505 337 385) (the applicant) a licence to sell gas in Victoria.

2) BACKGROUND

a. Requirement to obtain a licence

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.

b. Entitlement to apply for a licence

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.

c. The applicant

EnergyAustralia, the holder of a current retail electricity licence in Victoria, submitted an application for a licence to retail gas in Victoria in April 2008.

EnergyAustralia is one of the country's largest energy retailers with approximately 1.5 million customers in New South Wales (NSW), Victoria, South Australia (SA) and the ACT, of which there are 180,000 retail gas customers. It also operates Australia's largest electricity network, servicing more than three million people in Sydney, the NSW Central Coast, Newcastle and the Hunter.

The licence applied for and to be issued is a standard gas licence without special conditions for the retailing of gas to all classes of customers.

d. The application

By letter dated 4 April 2008, EnergyAustralia 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 EnergyAustralia's background, current operations, current organisational structure and compliance policy. EnergyAustralia also provided evidence of its financial viability.

e. Advertising the application

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.

A notice was placed in *The Age* newspaper on 18 April 2008. The advertisement invited interested persons to make submissions to the Commission in respect of the application received from EnergyAustralia by the close of business on 2 May 2008. The Commission did not receive any inquiries or submissions.

d. Invitation to interested parties to submit

By email dated 18 April 2008, the Commission wrote to each current licensee and other interested parties inviting them to make a submission in respect of the application. The Commission did not receive any submissions.

e. Provisions relating to the Commission's decision

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*.

3) CONSIDERATION OF THE APPLICATION

a. Financial viability

The criterion of financial viability relates to an applicant's ability to establish a sustainable business able to satisfy the interests of consumers. EnergyAustralia has provided sufficient information in the application to demonstrate that it meets this criterion.

Accordingly, the applicant has advised the Commission of its inquiries and intention to apply for *registration as a customer* with VENCORP and that it will comply with the credit support/prudential requirements imposed by VENCORP. Furthermore, the applicant has confirmed that as a Statutory State Owned Corporation it is financially viable.

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 the applicant, at the time of the consideration of the application, was considered to be financially viable.

b. Technical capacity

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. EnergyAustralia has provided sufficient information in the application to demonstrate that it can meet this criterion.

The applicant's key personnel have been involved in the Australian energy markets and associated businesses for many years. Already operating in the Australian energy market, the senior management team within EnergyAustralia has the proven skills and experience for managing an energy retail business.

EnergyAustralia intends to capitalise on its existing internal systems, processes and procedures established to manage its electricity retail business, for its proposed gas retail business and have provided information that supports this proposal. The applicant provided particulars in its application of its technical capacity to comply with the conditions of the licence.

In relation to the capacity to comply with regulatory requirements, EnergyAustralia has previously held a Victorian gas retail licence individually and under the EA-IPR Retail Partnership and has at all times acted as a responsible market participant with a strong focus on regulatory compliance and customer service.

To ensure continuing compliance with its regulatory obligations, EnergyAustralia have a comprehensive training regime, including regular updates on new obligations and changes to existing obligations, and testing of compliance awareness and knowledge.

The Commission has applied its standard assessment of technical capacity to EnergyAustralia and is satisfied that EnergyAustralia has the technical capacity to comply with the proposed licence conditions.

4) DECISION

The Commission is satisfied that EnergyAustralia:

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

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 EnergyAustralia. A copy of the licence is available from the Commission's website www.esc.vic.gov.au.

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THE ESSENTIAL SERVICES)
COMMISSION)
was affixed pursuant)
to the authority of the Commission on)
_____ June 2008.)

GREG WILSON
Chairperson