



GAS INDUSTRY ACT 2000
APPLICATION FOR A RETAIL LICENCE

AUSTRALIAN POWER & GAS PTY LTD
ABN 26 118 609 813

NOTICE OF DECISION

15 November 2006

SUMMARY

1. Pursuant to provisions of section 25 of the *Gas Industry Act 2000* (**GI Act**) the Essential Services Commission (**the Commission**) has granted Australian Power and Gas Pty Ltd (ABN 26 118 609 813) (**the applicant**) a licence to sell gas in Victoria.

BACKGROUND

Requirement to obtain a licence

2. Section 22 of the GI Act provides that a person must not engage in the sale or distribution of gas, either as a principal or agent 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 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) to distribute or supply gas; and/or
 - (d) to sell gas.

The applicant

4. On 17 August 2006, Australian Power and Gas Pty Ltd submitted an application for a licence to retail gas in Victoria. The applicant is an incorporated corporation limited by shares and first registered with the Australian Securities and Investment Commission (**ASIC**) on 2 March 2003.
5. The applicant is a 100 percent owned subsidiary of Microview Limited (**MVL**), a public and listed corporation on the Australian Stock Exchange that on 7 September 2006, amongst other things, announced a voluntary halt to trading. MVL was originally Chaosmusic Limited until 5 October 2005 and it then changed its name to Chaos Group Limited and subsequently to MVL on 25 August 2005. It would appear that MVL has operated as a shell company since it sold its CD/DVD replication business on 6 October 2005. The parent company of the applicant, MVL, made a further announcement to the ASX on 20 October 2006 confirming - (1) the change in company name from Microview Limited to Australian Power and Gas limited and change in function to energy retailing on the eastern seaboard of Australia; (2) to complete the acquisition of related company Australian Power and Gas Operations Pty Ltd (currently controlled owned by The Cobra Group); (3) to provide a shareholder presentation to facilitate the raising of an additional \$10 million in capital by way of a share issue and (4) to announce the appointment of the director and chairperson.
6. Australian Power & Gas Pty Ltd was established for the sole purpose of retailing electricity and gas in Victoria and in other states along the eastern seaboard. On 11 October 2006 the Commission granted a licence to retail electricity. On 5 and 7 September 2006, MVL announced the purchase of Greentricity; an entity that holds licence to retail electricity in New South Wales.
7. 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 of Victoria and New South Wales, 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 10 TJ of gas in a year. The applicant and its parent company have provided the Commission with comprehensive details of its business plans and marketing strategy and for the purposes of the parent re-launching the company on the Australian Stock Exchange; these matters have been the subject of independent assessment and verification.
8. The Commission has also assessed this component of knowledge and expertise as part of the application processes for a retail gas licence under the provisions of sections 26 and 27 of the GI Act. The applicant is able to leverage its operations located in New South Wales.

The application

9. By letter dated 17 August 2006, the applicant submitted an application to the Commission for a licence to sell gas in Victoria and also progressively provided the Commission with detailed and comprehensive attachments, some of which were marked '*commercial and in confidence*'. There is considerable information about the corporate and financial developments of the applicant located on the ASX website [ASX Code: MVL]. 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, details of the applicant's background, corporate and operational structure, experience and expertise, various commercial agreements with third parties, operating capability and skills (including gas trading arrangements), profiles of key personnel and a detailed appraisal of its financial viability.

Advertising the application

10. 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.
11. As provided at section 26 (2) of the GI Act, a notice specifying that the Commission has received an application for a licence advertised in *The Age* newspaper on Wednesday 11 October 2006 and interested parties were invited to make a submission to the Commission in respect of the application by the closing date of 27 October 2006. The Commission received no inquiries or submissions.

Express invitations to submit

12. By letter dated Wednesday 11 October 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. 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 26 (1) of the GI Act provides that 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 cited in the Commission's published *Guidance Notes for Applications for Gas Licences and the Transfer of Existing Gas Licences*, the Commission will not grant an application for a retail licence unless the Commission is satisfied that -
 - (a) the applicant is financially viable; and
 - (b) 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 gas and, therefore, to also promote efficiency and economy in those activities. Accordingly, consistent with its objectives under the provisions of both the GI Act and the ESC Act, the Commission has granted a licence to Australian Power and Gas Pty Ltd (ABN 26 118 609 813).

ISSUES

Technical capacity

16. The degree of technical capacity required to satisfy the Commission 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.

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 and outsourced service providers have been involved in the Australian energy market, most notably in Victoria and New South Wales.

The Commission has applied its standard assessment of technical capacity to the applicant. The Commission is satisfied that Australian Power and Gas Pty Ltd (ABN 26 118 609 813), has the technical capacity to comply with the proposed licence conditions. Interviews with key personnel, scheduled meetings, documentation and regular communications with key personnel have confirmed that Australian Power and Gas Pty Ltd (ABN 26 118 609 813) has acquired a comprehensive knowledge of the Commission's Codes and Guidelines.

Financial viability

18. The applicant must also demonstrate its financial viability. 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 –
- the applicant, based on guarantees and the financial position of its parent, MVL, has sufficient financial resources to sustain a retail gas business in Victoria
 - the applicant can satisfy the financial and prudential requirements as prescribed by VENCORP

Considering the information provided, the Commission has applied its standard assessment of financial viability to the applicant. This included accessing information from the independent advisers and financiers associated with the re-launch of MVL on the ASX. The process also required, 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. These matters are subject to independent assessment and are independently verified where applicable.

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, has satisfied the financial test and Australian Power and Gas Pty Ltd (ABN 26 118 609 813) can be considered to be financially viable.

Compliance with Codes and Rules

19. The provisions of Victorian gas retail licences require the licensee to comply with all applicable codes, guidelines and procedures.
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

21. The Commission is satisfied that Australian Power and Gas Pty Ltd (ABN 26 118 609 813)-
- has the technical capacity to comply with the conditions of the licence to be granted;
 - has satisfied the financial viability requirements of the GI Act; and that
- the granting of a licence is not inconsistent with the GI Act.
22. Having regard to the objectives specified in section 18 of the *Gas Industry Act 2000* and section 10 of the *Essential Services Commission Act 2001*, the Commission has granted a gas retail licence to Australian Power and Gas Pty Ltd (ABN 26 118 609 813). The Commission has completed a review of the form and content of the licence and this was settled at its meeting of 14 March 2007. 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)
14 March 2007.)

GREG WILSON
Chairperson