



Level 2, 35 Spring St
Melbourne 3000, Australia
Telephone +61 3 9651 0222
 +61 3 1300 664 969
Facsimile +61 3 9651 3688

GUIDANCE NOTES FOR APPLICATIONS FOR ELECTRICITY LICENCES AND THE TRANSFER OF EXISTING ELECTRICITY LICENCES

NOVEMBER 2006

DISCLAIMER

The Essential Services Commission (the Commission) has issued these Guidance Notes to provide information to potential applicants to assist them in making licence applications under the Electricity Industry Act 2001 (Vic).

The Guidance Notes contain general information and are not a substitute for legal, financial or other advice of a commercial and technical nature which may be required. Applicants are encouraged to obtain such advice prior to submitting an application. The Guidance Notes do not and are not intended to vary, derogate from or otherwise limit the Commission's statutory powers, functions and discretions. In particular, the Commission may depart from the statements contained in these Guidance Notes in relation to an application.

CONTENTS

Contents.....	III
1 Introduction	1
1.1 Information Sources	2
1.2 Applicant's Responsibilities	2
2 Background	3
2.1 Who May Apply For A Licence?	3
2.2 Form Of The Application	3
2.3 Licence Application Fees And Transfer Fees	4
2.4 Annual Licence Fees	4
2.5 Requirements Of Holding A Licence	4
2.6 Transfer Of A Licence	5
2.7 Exemptions From The Requirement To Hold A Licence	6
2.8 Use Of System Agreements (Retail And Distribution Licences)	6
2.9 National Electricity Market Management Company Pty Ltd	6
3 Guidance On Key Matters	7
3.1 Financial Viability	7
3.2 Technical Capacity	8
3.3 Revocation Or Surrender Of Licence	9
4 The Licensing Process.....	10
4.1 Publication Of The Licence Application	10
4.2 Commercial-In-Confidence Information	11
4.3 Submissions	11
4.4 Final Decision	12
Schedule 1 Content Of The Application	13
Section 1 Information On The Applicant And Nature Of The Application	13
Section 2 The Commission's Objectives	14
Section 3 Information On Financial Viability	14
Section 4 Information On Technical Capacity	15
Section 5 Commercial-In-Confidence Information	21
Schedule 2 Application For Licence Transfer	23
Schedule 3 Statutory Declaration	22

The Essential Services Commission (the Commission) is the independent economic regulator established by the Victorian Government to regulate prescribed essential utility services, including electricity, gas, water, ports, grain handling and rail freight industries and aspects of the insurance industry.

One of the Commission's statutory functions is to administer the licensing of electricity distribution, generation, transmission and retailing activities. A person is prohibited from engaging in the sale or supply or generation or transmission of electricity unless that person holds a licence to undertake the activity or has received an exemption from the Governor-in-Council (see chapter 2).

In undertaking this role, the Commission is guided by the provisions of the Electricity Industry Act 2000 (EI Act) and the Commission's objectives under the Essential Services Commission Act 2001 (ESC Act). The Commission's primary objective is to perform its functions and exercise its powers to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In seeking to achieve its primary objective, the Commission must also have regard to the following facilitating objectives as prescribed under the legislation:

- to facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
- to facilitate the financial viability of regulated industries;
- to ensure that the misuse of monopoly or non-transitory market power is prevented;
- to facilitate effective competition and promote competitive market conduct;
- to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency;
- to promote consistency in regulation between States and on a national basis.

The Commission will not grant an application for the issue of a licence unless the Commission is satisfied that:

- the applicant has and will maintain the technical capacity to comply with the conditions of the licence, and
- the applicant is financially viable and can be expected to continue to be so.

The EI Act also enables the Commission to impose such terms and conditions on a licence as the Commission so decides.

The purpose of these Guidance Notes is to provide guidance to licence applicants on the information required from applicants and the Commission's approach to assessing applications in relation to issuing a retail licence.

The Guidance Notes should be read in conjunction with the Procedures for Applications for Electricity Licences and Electricity Licence Transfers. Section 19(7) of the EI Act provides for the Commission to decide the procedures that are to apply with respect to the issue of licences. The Procedures can be accessed on the Commission's website at www.esc.vic.gov.au.

Applicants should note that these Guidance Notes are for information purposes only and do not in any way derogate from or amend any statutory or regulatory requirements. The Commission may in processing an application, at its discretion and where it considers it appropriate, require additional information or depart from the process described in these Guidance Notes.

1.1 Information sources

Division 3 of Part 2 of the EI Act outlines the law with regard to the licensing of electricity distribution, generation, and transmission and retail entities. A copy of the relevant legislation cited in these Guidance Notes is available at <http://www.dms.dpc.vic.gov.au>.

The Commission's website (www.esc.vic.gov.au) provides details of the relevant and applicable codes and guidelines that apply to the distribution, generation, transmission and/or retailing of electricity in Victoria. All applicants must be familiar with and be able to demonstrate to the Commission that they have a detailed understanding of these provisions. Applicants can find information concerning these codes and guidelines on the Commission's website.

1.2 Applicant's responsibilities

The applicant is responsible for providing the Commission with accurate and relevant documentation. This will ensure that the application is processed promptly and without delay.

All applications are assessed on a case-by-case basis. If insufficient information is provided with an application the Commission will generally specify and request additional information to be submitted before the application is considered further.

However, applicants should note that it is their responsibility to provide all necessary detail with their application and should not rely on the Commission to search for or request information to support any application.

In Victoria, a person is required to hold a licence issued under the EI Act to transmit, distribute or supply, generate or sell electricity, unless otherwise exempt under the provisions of section 17 of the EI Act. The most common form of new licence applications are to retail or generate electricity.

Unless exempted, the transmission, distribution, generation, supply or sale of electricity without a licence is an offence under the provisions of section 16 (1) (a) and (b) the EI Act. If found guilty, the penalty for the failure to hold a licence is up to 1000 penalty units and 100 penalty units for each day after the day on which a notice is served on the person by the Commission.

The holder of an electricity licence must also apply to the Commission if they wish to have the licence transferred to another party or entity or wish to surrender the licence.

Section 19 of the EI Act provides that the Commission may grant or refuse an application for a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and under the ESC Act.

2.1 Who may apply for a licence?

An application for a licence may be made by any legal person including, without limitation, individuals, partnerships, incorporated associations, unit and other forms of trusts and corporations. Entities that are not a legal person (for example, an unincorporated joint venture) cannot apply for a licence.

2.2 Form of the application

Chapter 3 of these Guidance Notes and its accompanying schedules set out the information that should be included in any application (see section 18(2) of the EI Act). Applicants should note that these Guidance Notes are a general statement of what will usually be required and the Commission may require the applicant to provide additional information.

Every application must be accompanied by a statutory declaration, confirming the accuracy and completeness of all information provided in the application. A sample statutory declaration is set out at schedule 3 to these Guidance Notes.

Applicants can view recent licence applications in the electricity sector on the Commission's website at www.esc.vic.gov.au.

The Commission notes that a transfer of licence may attract the payment of stamp duty to the State Revenue Office. Where a transfer arises, the Commission will require evidence that the transferor has obtained advice (either legal and/or accounting) concerning whether a duty is payable for the transfer.

2.3 Licence application fees and transfer fees

The EI Act provides that an application or licence transfer must also be accompanied by the application fee, if any, as fixed by the Commission (refer to section 18 (3) of the EI Act). At the date of publication, no application or transfer fees have been prescribed under this section. Applicants should confirm with the Commission whether this has changed prior to lodging an application.

2.4 Annual licence fees

Holding an electricity licence incurs annual licence fees. These fees and charges are determined by the Minister for Finance (in accordance with the provisions of section 22 of the EI Act) having regard to the total costs and expenses incurred by the Commission in the exercise of its powers, performance of its functions and achievement of its objectives in relation to the electricity sector.

Each annual determination by the Minister specifies the various licence fees apportioned annually to the licence categories within the electricity sector. Copies of the Minister's Determinations are placed on the Commission's website each year.

The licence fees determined by the Minister for Finance are administered by the Commission. At annual intervals, the Commission, on behalf of the Department of Treasury and Finance, will send to each licensee, depending on the licence category within the sector, an invoice for the licence fee in respect of the preceding financial period ending on 30 June. The invoice will contain the detail of the licensee, the licence category, the amount payable and the payment terms and conditions.

Licence fees are to be paid on receipt of an invoice via one of the payment options set out in the invoice.

2.5 Requirements of holding a licence

The term of the licence and its conditions are at the discretion of the Commission (see sections 20 and 21 of the EI Act). Section 21 of the EI Act outlines some of the types of conditions that can be included in a licence.

A copy of each current licence can be found on the Commission's website: www.esc.vic.gov.au. Applicants should note that the Commission may, consistent with section 20 (2) of the EI Act, impose additional or alternative conditions on a particular licensee.

Applicants already holding a licence or having a direct or indirect interest in an entity holding a licence should be aware that some interests are prohibited and they should consult Part 3 of the EI Act, and where applicable, obtain independent advice.

By virtue of their licence, a transmission, generation, distribution or retail licensee is generally required to comply with any applicable Codes, Guidelines or instruments issued by the Commission covering retail, distribution, generation and transmission as well as other relevant requirements including legislation overseen by EnergySafe Victoria (see www.energysafevictoria.com.au) and national

instruments such as the National Electricity Rules. These include, but are not limited to:

- the Energy Retail Code
- the Wrongful Disconnection Policy (Retail)
- the Victorian Electricity Supply Industry Metrology Procedure
- the Electricity Distribution Code
- the Electricity Customer Metering Code
- the Electricity Customer Transfer Code
- the Code of Marketing Conduct
- the Connection of Embedded Generation Guideline
- the Energy Product Disclosure Guideline
- the Bulk Hot Water Charging Guideline
- the Provision of Services by Distributors Guideline
- the Regulatory Audits Guidelines — Retail and Distribution businesses
- the Greenhouse Gas Disclosure on Electricity Bills Guideline
- the Connection and Use of System Agreements Guideline

The Codes, Guidelines, Procedures and other instruments issued by the Commission can be found on its website: www.esc.vic.gov.au.

2.6 Transfer of a licence

After a licence is granted, it may be transferred with the Commission's approval in accordance with the relevant criteria and following a public consultation process (refer to sections 31(1)-(11) of the EI Act). Applicants seeking to undertake the transfer of certain types of licence (generation, distribution and transmission) should be aware of the restrictions detailed at section 32 of the EI Act and as set out at Part 3.

The Commission will require the existing licensee (the transferor) to apply to the Commission in writing (executed under seal, if a corporation) for the approval of the transfer of the licence to the transferee. The Commission will also require written confirmation from the transferee setting out their formal consent to the transfer.

The Commission will require the transferor to obtain and provide from the transferee all relevant information and necessary declarations set out in these Guidance Notes and to follow the process set out in the Procedures as if the transferee were applying for a new licence to be issued.

In addition to a Statutory Declaration, a transfer of licence application must also be accompanied by a declaration in the form set out at schedule 2 of these Guidance Notes.

The transferee must also address the provisions of the EI Act as set out in Part 3 concerning cross ownership and prohibited interests. Inquiries concerning these matters should be directed to the Commission.

2.7 Exemptions from the requirement to hold a licence

Section 17 of the EI Act provides for some persons to be exempted from the requirement to obtain a licence. Exemptions are by way of:

- the applicant meeting the requirements of the Exemption Order made on 1 May 2002. This may be assisted by the granting of a certificate in accordance with clause 5 of the Exemption Order and as set out on the Commission's website (see the separate Guidance Notes concerning this matter), although the issuing of such a certificate by the Commission in no way grants the exemption. All enquiries concerning the requirements of the Exemption Order and requests for certificates should be directed to the Commission; and
- an Order made by the Governor in Council. All enquires regarding exemptions by way of an Order in Council should be made to the Department of Infrastructure (Energy and Security Division) – telephone (03) 9655 8888.

2.8 Use of system agreements (retail and distribution licences)

It is incumbent on all applicants for a retail licence to negotiate Use of System Agreements with all licensed distributors whose geographic areas include any of the retail licence holder's customers or intended customers. In effect, this also involves the negotiation of credit support facilities with the licensed distributor.

Credit support arrangements refer to the commercial arrangements that an electricity retailer enters into with an electricity distributor to manage the risk exposure of the distributor to the non-payment of its distribution charges (which are collected by retailers on the distributor's behalf). The credit support arrangements are subject to approval by the Commission and are set out in the distributor's default Use of System Agreement. The credit support arrangements do not prevent a distributor and a retailer negotiating alternative arrangements.

Credit support arrangements aim to protect customers by ensuring that distributors have some level of financial security against the non-payment of Distribution Service Charges that are defined in the default Use of System Agreement to include network charges, excluded service charges and additional charges that may be imposed by the distributor under the Use of System Agreement with a retailer. This contributes to their ongoing financial viability and continuing ability to provide distribution network services of a quality demanded by their customers.

An applicant for a retail licence must contact the relevant licensed distributor/s prior to submitting the licence application with the Commission and provide evidence of negotiations involving the credit support arrangements.

2.9 National Electricity Market Management Company Pty Ltd

It is a requirement that all licence applicants must also register as a market participant with the National Electricity Market Management Company (NEMMCO). An entity cannot trade in the market place until this process has been completed.

NEMMCO can be contacted on telephone 1300 361 011 (toll free) or infocentre@nemmco.com.au or via its website at <http://www.nemmco.com.au>.

Consistent with the objectives of the Commission (section 8 of the ESC Act and section 10 of the EI Act), an applicant's financial viability and technical capacity are central to the consideration of an application for a retail licence (see section 19(2)(a) and (b) of the EI Act).

The Commission will also consider whether an applicant is a *fit and proper person* to hold a licence and an applicant should be prepared to provide information as to its probity and that of its senior management.

It is incumbent on the applicant to provide evidence that it can meet the entry criteria. This may include independent verification that the licence applicant is financially viable and has the technical capacity to comply with the conditions of the licence and all applicable regulatory requirements.

Applicants should note that a licensee is required to maintain both its financial viability and technical capacity (and comply with all other licence requirements) for the duration of the licence.

3.1 Financial viability

Applicants applying for an electricity retail licence are required to demonstrate their financial viability to the Commission (see section 19(2)(a) of the EI Act). However, the Commission may use its discretion on whether it assesses an applicant's financial viability for all non-retail licence applications in accordance with the provisions of section 19(3) of the EI Act.

Section 19(3) provides that the Commission does not have to be satisfied with an applicant's financial viability if the applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Rules and the Rules includes prudential requirements. However, it has been the Commission's operational experience that NEMMCO relies on each jurisdiction to complete some form of financial viability assessment before granting registration. Thus, the Commission will generally undertake an assessment of financial viability even where an applicant may have also applied for registration with NEMMCO.

Accordingly, prior to NEMMCO granting full registration, it requires the Commission to amongst other things, and as part of the licensing process, consider the issue of financial viability.

The term 'financial viability' is not defined in the legislation. Hence, the Commission has not released a definitive test of what constitutes financial viability for new electricity industry entrants.

In considering financial viability, the Commission will consider amongst other things that the applicant will, if granted a licence, have access to sufficient financial capital and establish a sustainable business in order to satisfy the interests of its customers. In considering these issues, the Commission does so for its own purpose and its conclusion is not to be relied upon for any other purpose by any

other person. The Commission's assessment may be based on a combination of information sources, none of which is to be regarded as individually determinative.

The key areas of enquiry and documentary evidence that the Commission may need to examine in relation to a particular applicant will depend largely on the individual circumstances of that applicant (including, for example, the type of licence sought and corporate structure of the applicant). For a list of the key factors which may be examined by the Commission in confirming an applicant's financial viability refer to schedule 1.

3.2 Technical capacity

The Commission is obliged to consider the applicant's technical capacity (see section 19 (2) (b)).

The Act provides for certain circumstances in which the Commission may grant a licence but defer the consideration of technical capacity. Accordingly, the Commission does not have to be satisfied with an applicant's technical capacity in accordance with the provisions of section 19 (4) of the EI Act where:

- the activities specified in the licence are not likely to commence or be carried out within the 12 month period after the licence has been granted, or
- the Commission grants the application subject to such conditions as decided by the Commission relating to the further approval of the applicant's technical capacity or the approval of future facilities necessary for the carrying out of such activities.¹

The Commission's assessment of technical capacity for licensees falls within two broad categories:

- the capacity to operate and manage the relevant electricity business and
- the capacity to comply with the applicable regulatory requirements.

The applicant must demonstrate that it can satisfy these requirements, and will do so for the duration of any licence. The applicant is required to provide supporting documentation as evidence, amongst other things, that demonstrates that:

- it has the business skills, knowledge, personnel, systems and the ability to operate the relevant electricity industry business
- it has the capacity to manage risk and to operate an effective and functional risk management and compliance system consistent with the relevant Australian Standards (for example (AS – 3806 of 2006), and
- it has the capacity to comply with regulatory requirements as specified in the EI Act, the licence and applicable codes, procedures and guidelines.

A list of the obligations that the applicant must demonstrate its technical capacity to undertake is set out in schedule 1.

¹ This provision enables an applicant or entity to have the Commission defer the consideration of "technical capacity" pending the organisation of its affairs to accommodate technical capacity.

If the applicant intends to meet any material aspect of the technical capacity requirements by the use of contractors (including contracts with related entities), it must provide the Commission with copies of all contracts in their final form. Applicants should be aware that it is not acceptable to the Commission to state that they are unable to produce such contracts on the basis that they are 'confidential'. When entering into any such contract an applicant should ensure that the contract can be produced to the Commission. The Commission will treat the contents of such contracts as confidential (refer to clause 4.2 below).

Generally, such contracts relate to the outsourcing of functions to service providers.

In considering 'materiality', the number of different contracts will be considered and any group of like contracts will be taken together. However, it remains at the discretion of the Commission which contracts an applicant may need to provide.

Depending on the nature of the contractual relationship and the services being performed by entities other than the applicant, it may be necessary for these other entities to also be licensed in accordance with the language used at section 16 of the EI Act.

The information requirements for establishing technical capacity are discussed in schedule 1.

3.3 Revocation or surrender of licence

The surrender or revocation of a licence is set out at section 29(3) of the EI Act in accordance with the procedures specified in the licence.

In the case of a *retail* licence, and where the revocation of the licence is by agreement or the licence holder intends to surrender the licence, the Commission must ensure the protection of consumers and other third parties and demonstrate that it has acted prudently, reasonably and in conformity with its statutory duty.

Prior to the Commission agreeing to the surrender of a *retail* licence, the licensee must:

- Provide the Commission with a signed declaration confirming that:
 - all customers have been accounted for, that is, that they have already been transferred or novated to another licence holder (transferee) or will be so transferred by completion of the proposed transfer (it may be necessary to include evidence, for example, a copy of a Deed of Novation)
 - the customers who have been transferred or novated to another licence holder have done so under the same or more favourable terms and conditions
 - confirmation that the transferee is willing to accept the customers on the same terms and conditions, and
- Provide written advice of the legal arrangements to be put in place in the event of litigation by an aggrieved customer within a 6 year period following the revocation or surrender.²

² This information is also required where there is a transfer of a retail licence. (see 2.6 above).

The time that the Commission will take to process a complete application is usually from 8 to 10 weeks, including public advertising and the provision to the Commission of public submissions. However, this depends largely on the circumstances of the applicant, the quality and standard of the documentation provided to the Commission and the number of submissions received in relation to the application.

Applications will be assessed on a case-by-case basis having regard to the requirements of the relevant legislation.

In assessing an application for a licence, the Commission must have regard to its objectives under the EI Act (section 10) and at section 8 of the ESC Act. The Commission may engage the services of external consultants (for example accountants or lawyers) to assist in the assessment of the information provided to the Commission.

The Commission generally interacts with the applicant during the application phase providing guidance and feedback wherever possible. Therefore, applicants are encouraged to provide a draft application to the Commission before it is formally considered by the Commission. The type of information that the Commission will usually require to be included in an application is set out at schedule 1.

Whilst the Commission, where appropriate, assists the applicant to prepare the licence application prior to the applicant formally submitting the application, the applicant bears complete responsibility to provide the Commission with accurate, truthful and relevant documentation.

The Commission also encourages applicants to consult with other entities including the Energy and Water Ombudsman of Victoria (EWOV), VENCORP, the Department of Human Services and EnergySafe Victoria, NEMMCO and licensed distributors as the case may be.

The Commission has developed *Procedures for Applications for Electricity Licences and Electricity Licence Transfers*. These Procedures describe the processing of a licence application by the Commission and can be obtained from the Commission's website: www.esc.vic.gov.au.

4.1 Publication of the licence application

Section 19 (6) of the EI Act requires publication of the application. On receipt of the formal licence application, the Commission will publish a notice in a daily newspaper circulating generally in the State of Victoria (for example, *The Age*) inviting the public to obtain a copy of the application and to make submissions consistent with the Commission's objectives at section 8 of the ESC Act. The Commission may also publish this notice in a local newspaper if it deems this is appropriate.

A copy of the application is also published on the Commission's website. Stakeholders registered with the Commission (including all other licensees) are individually notified of the application by way of e-mail.

The closing date for submissions is usually a minimum of 2 weeks and a maximum of 4 weeks after the application is advertised, although this period may vary depending upon the application.

4.2 Commercial-in-confidence information

While it is the Commission's preference to provide as much detail as possible to the public (to assist with the submission process), the Commission acknowledges that an application may include commercial-in-confidence information.

Applicants should clearly mark any commercial-in-confidence information on each relevant page and place it in a stand-alone section of the application (see schedule 1). All such information should be clearly cross-referenced to the relevant section of the application.

Only information that is in fact commercial-in-confidence should be marked as such (this may include marketing strategies, contractual agreements, financial data and projections), as the public must have sufficient information to be able to make meaningful submissions to the Commission regarding the licence application.

No party will be provided information that the Commission agrees is commercial-in-confidence.

If the Commission does not agree with an applicant's designation of information as "commercial-in-confidence", the Commission will generally notify the applicant, although it has no obligation to do so, that it does not agree with designation of the information as being "commercial-in-confidence" prior to making the information available to the public.

4.3 Submissions

The Commission accepts submissions in relation to an application from all interested persons. An interested person can include other industry bodies, regulators, private sector operators and community or consumer groups. This process provides the wider community with the opportunity to comment on the scope and possible issues arising from an application and forms an integral part of the process for considering an application. This is consistent with Section 19 of the EI Act and Section 15 of the ESC Act.

All submissions received, except those that are marked commercial-in-confidence or that are not in accordance with the terms and conditions of publication, are published on the Commission's website under Energy (see www.esc.vic.gov.au).

Once the closing date for submissions has passed, the Commission will notify the applicant in writing of any submissions that have been made and provide the applicant with copies of any published submissions and summaries of any unpublished submissions. This will provide the applicant with an opportunity to comment on the submissions and to clarify or respond to any issues raised.

The Commission will take into account all submissions in its assessment of a particular application and may contact the interested party or stakeholder to discuss any submission.

All enquiries regarding submissions should be directed in writing to the Manager, Licensing.

4.4 Final decision

Following completion of the submission process, the Commission will undertake a review of the application and any other information provided or obtained in relation to the application. In reviewing the accuracy and reliability of the information given by the applicant, the Commission may use external information such as the views of consultants appointed by the Commission or external data bases such as ASIC. An applicant is given an opportunity to respond to any adverse comments made by such consultants or information derived from external sources.

The Commission considers all material relevant to an application, including all the material lodged in support of an application by an applicant, submissions made by interested persons and any other information including responses to that information by the applicant.

Applicants will be notified of the Commission's decision in writing (see section 19(8) of the EI Act) and the decision will be posted on the Commission's website. The Commission's published final decision on the application may include specific comment on the submissions. The Commission is also required by legislation to publish its decision in the Victoria Government Gazette. Those who have provided submissions in relation to the application will be notified of the Commission's final decision.

In the event of a refusal to grant a licence, the Commission will provide to the applicant reasons for the refusal (see section 19 (8) of the EI Act). In the event the Commission refuses to grant a licence, the applicant may have rights of review and should consider obtaining legal advice in respect of such. The Commission will publish its decision, but would not generally publish its reasons for refusing an application.

As set out in chapter 2, the Commission has the power to impose specific licence conditions as it sees fit (see sections 20 and 21 of the EI Act³). Forms of current licences are located on the Commission's website.

³ Licensees must also be familiar with any "deemed" conditions arising directly from the EI Act.

SCHEDULE 1 CONTENT OF THE APPLICATION

The Commission does not have a specific licence application form. Rather, the Commission places the onus on the applicant to provide sufficient information in support of its application.

However, to provide guidance to applicants, the Commission has set out in this schedule a summary of the information that an applicant may be expected to provide. The information listed is not exhaustive and the Commission may require an applicant to submit additional information.

Section 1 Information on the applicant and nature of the application

The applicant should provide the following information:

- Name of the applicant
- The ABN or ACN details
- Registered, business and/or postal address
- Contact person on behalf of the applicant (name, title and contact details)
- Diagram of corporate or other structure (including details of any parent and related companies within the meaning of the Corporations Act 2001 [Cth])
- Diagram of organisational structure (including composition of the board, management and other key personnel)
- A short summary of the experience of the key personnel
- Details of all contracts and agreements for outsourced services that are either under negotiation or to be entered into by the applicant to facilitate the conduct and operation of the electricity business. Contracts with related parties are especially relevant and must be provided in full as applicable or as requested by the Commission.
- Incorporation details (including a copy of the applicant's Certificate of Registration, Corporation's Constitution)
- If the applicant is an entity formed pursuant to a partnership, include a copy of the partnership agreement
- If the applicant is a trust, include a copy of the trust deed
- If the applicant is a special purpose or 'joint venture' company, include a copy of any joint venture agreement, shareholders' agreement and/or associated agreements
- If it is proposed to undertake some or most of the operational aspects of a licence, if issued, through a service company, copies of proposed agreements and the relationship with the service provider must be provided. If the applicant is domiciled outside Australia, certified documentation of the registration of the business or company and the constitution/rules from the country where the entity is registered. Additional information concerning corporate regulation in the

foreign country may be required. (For those corporations registered and incorporated in Australia, the Commission will undertake its own direct searches of the ASIC database.)

- If a non public company, trust or other non public entity, details of the names and addresses of shareholders, unit holders, beneficiaries or others having an interest in the entity
- Details of any prosecutions or regulatory complaint commenced against the applicant or any other company or person related to or associated with the applicant as defined by reference to the Corporations law or any key personnel in any jurisdiction, and the results or status of such prosecutions or complaints.

In regard to the application, the applicant should provide:

- Type of licence sought
- Date from which licence is sought
- Nature and scope of operations for which the licence is sought
- Details of current or former licences held in this and/or other jurisdictions
- Previous unsuccessful licence applications sought in this and/or any other jurisdictions
- Licences held by associates of the applicant. The term “associates” includes subsidiaries, parent and other related parties of the applicant as defined in the “Corporations Act 2001” (Cth)
- Licence conditions — if the applicant is seeking non-standard licence conditions, the nature and reasons for seeking these conditions should be explained. In such circumstances the applicant should also provide a draft outline of the proposed licence or ‘non-standard’ conditions compared with the current standard licence on the Commission’s website as at the date of the application.

The applicant should also provide information on existing activities both within and external to the electricity industry:

- List experience of key personnel, the applicant and related parties within and external to the electricity industry.
- Details of the broad nature of proposed participation in the Victorian electricity industry.

Section 2 The Commission’s objectives

The applicant should review the objectives set out under sub-sections 8(1) and (2) of the ESC Act and explain how the granting of a licence to the applicant would be consistent with those objectives.

Section 3 Information on financial viability

The applicant must provide to the Commission:

- a series of statements within the public component of the application that the applicant can meet and address the financial viability requirement, and

- a dedicated section [Commercial-in-Confidence] that provides the documentary evidence and support for the applicant's case that it has sufficient financial resources or access to such resources to sustain a viable business in the electricity industry.

This section should include:

- Current balance sheet and financial data
- Significant contracts
- Annual Report
- Standard & Poor's or other acceptable rating
- Statements from internal/external auditors
- Statements from consultants including accountants and legal advisors
- Statement of assets and liabilities
- Shareholder register
- Certificate of registration/partnership agreement/trust deed
- Statements from banks/financiers, shareholders, the board or the parent company
- Guarantees in place
- Evidence, where applicable, of an Australian Financial Services Licence, or that an application for this form of licence is in progress or an explanation of why an application for such a licence is not required
- An assurance by the applicant that it has sufficient financial resources to sustain its operations including all prudential requirements set by NEMMCO and/or licensed distributors
- Preliminary discussions and/or negotiations with licensed distributors concerning the credit support arrangements

Applicants must also provide a business plan covering at minimum the next 5 years that addresses the rationale supporting the applicant's case that it meets this criterion, and an assurance by the applicant that it has sufficient financial resources to sustain its operations.

Section 4 Information on technical capacity

For all licence applications, this section should include statements within the public component of its application that support that it has the expertise, knowledge and skill base to operate a viable electricity business in the relevant sector. In addition, this section should include details of:

- Organisational chart of key personnel with details of experience and knowledge of the industry
- Contracts with external service providers, including customer and supply contracts and outsourcing arrangements
- Statements from industry bodies including EWOV and other regulators
- Internal controls, policies and procedures

- Business model/plans
- Risk management policies
- Governance policies
- References for key personnel
- Australian Financial Services Licence (if applicable)
- Demonstrations of billing and management systems (if applicable)
- Complaints register and procedures
- Privacy statements
- Document retention policies
- Industry submissions and results of any research supporting the application

Information in support of a generation licence application

In support of an application for an electricity generation licence, the applicant must provide:

- Details of experience in and knowledge of the electricity industry
- A summary of the skills and experience of the directors and senior managers and their relevance to meeting the requirements of the licence
- Evidence that the applicant has the capacity to comply with the licence conditions, codes and guidelines relevant to its application
- Evidence of any interactions or preliminary registration with VENCORP and NEMMCO
- If the applicant is to rely on another entity to provide staff and resources, a summary of the relationship between the applicant and this entity, including any formal agreements to provide services, and a summary of this other entity's experience in and knowledge of the electricity industry, and technical capacity to meet the relevant requirements of the licence
- Confirmation that all planning and environmental approvals have been completed
- Risk, governance and compliance management and strategies
- Evidence that demonstrates that the entity can successfully operate a business within the electricity industry
- Confirmation that there are no cross ownership issues arising under the provisions of Part 3 of the EI Act — cross ownership.

Information in support of a distribution licence application

It is noted that there are monopoly electricity distribution licences granted in Victoria based on set geographic boundaries. Accordingly, it is unlikely that the Commission would be required to consider new applications for distribution

licences.⁴ However, the Commission may be required to consider applications for the transfer of a distribution licence upon the sale of a business.

The Commission would enter into direct discussions with the proposed transferee regarding additional application requirements if such circumstances were to arise.

Information in support of an electricity retail licence application

In support of a retail licence application, the applicant should provide the following information:

- Details of experience in and knowledge of the electricity industry
- A summary of the skills and experience of the directors and senior managers and their relevance to meeting the requirements of the licence
- Evidence that the applicant has the capacity to comply with the licence conditions, codes and guidelines relevant to its application
- If the applicant is to rely on another entity to provide staff and resources, a summary of the relationship between the applicant and this entity, including any formal agreements to provide services, and a summary of this other entity's experience in and knowledge of the electricity industry, and technical capacity to meet the relevant requirements of the licence
- Whether the applicant intends to retail to either (1) < 160 MWh in a year (domestic / small business) or (2) > 160 MWh in a year –(large businesses) or both
- Details of whether the applicant has entered into an arrangement with a licensed generator or re-allocation agreement to minimise exposure in the purchase of electricity on the wholesale market
- Preliminary registration and/or discussions with NEMMCO

The application must also provide information on its:

- Capacity to operate a business:
 - Managing supplier contracts
 - Managing customer contracts
 - Customer account establishment and management
 - Customer service provision
 - Billing and collection
 - Appropriate management systems
- Capacity to comply with regulatory requirements
 - Provision of information to distributor
 - Meter reading
 - Provision of information to customers
 - Privacy and confidentiality management
 - Customer information management system

⁴ Although it should be noted that licences have been granted in the past for small networks embedded within an area for which another entity holds a licence.

- Management and compliance systems

In providing this information, the applicant should demonstrate its capacity to:

- manage supplier and customer contracts
- maintain customers' accounts accurately and securely
- provide customer service at least to the standards as specified in the relevant codes and guidelines
- manage and undertake customer billing and collection
- maintain appropriate management, governance and reporting systems consistent with codes and guidelines and any applicable Australian Standards (AS-3806, AS – 8000)
- maintain appropriate management and records systems.

Applicants must demonstrate that they have documented procedures, processes and practices in place in order to achieve these outcomes and to facilitate the training of personnel that reflect, amongst other things, the applicant's application of the relevant industry standards, and in particular, the Commission's codes and guidelines. For example, staff involved in the marketing of electricity to new or potential customers must be appropriately trained in the licensee's obligations.

Manage supplier and customer contracts

Applicants should demonstrate their ability to successfully manage supplier contracts. This includes the capacity to:

- in the case of a retail licence applicant, enter supply contracts for the purchase of electricity or financial arrangements to hedge exposure to the wholesale electricity market
- account for and settle energy purchases and/or network service charges
- manage risk by having contingency arrangements and to establish processes to minimise any financial exposure.

Applicants should also demonstrate that they can successfully manage customer contracts. This includes ensuring that in the case of a retail licence:

- The terms and conditions of proposed contracts with customers (refer to the definition of customer in the EI Act) and potential customers will be in accordance with all relevant codes and guidelines.
 - Where contracts with categories of customers differ from standards established under the various codes, clear statements of the differences are to be provided to the customers.
 - Retail applicants should note that there is also an obligation to maintain accurate data on a website including the terms and conditions of contracts, exit arrangements and other relevant consumer information
 - Terms and conditions of proposed contracts with customers must clearly and accurately set out the customers' and retailers' rights and obligations and comply with the requirements of Fair Trading legislation or other relevant competition legislation such as the Trade Practices Act 1974 (Cth).

Customer account establishment and management

Clear processes for establishing and managing customer accounts are required. Key aspects include:

- the capacity to legally perform creditworthiness checks
- account establishment on an appropriate customer information system and consistency with the Privacy Act 1988 (Cth) and the National Information Privacy Principles
- the ability to maintain accurate and up to date records of customers' account histories, and
- established and precise protocols to undertake the closure of customer accounts (on request of a customer), including the ability of a retailer to send a final bill to customers within a reasonable period after receiving customer advice of the transfer or termination of contract.

Customer service provision

The ability to ensure a consistent and high level of service to customers is crucial, including providing evidence to demonstrate that an applicant can operate and sustain an electricity business. Key aspects of successful customer service provision and account management include:

- a call centre to handle telephone calls from customers (and potential customers), including matters involving, amongst other things, account and billing issues and inquiries and the accurate recording of all interaction and exchanges with customers. (Note that if the applicant contracts out the services of a call centre to handle all customers' issues then the Commission must be provided with a copy of the contract)
- the capacity to record all inquiries and issues overseen by the call centre
- the capacity to handle customer correspondence by letter, fax or email
- the capacity to collect information for review and performance measurement purposes
- membership and participation in the Energy and Water Ombudsman Scheme (EWOV) or an alternative scheme acceptable to the Commission
- the capacity to handle complaints and resolve disputes (refer to Australian Standard AS 4269). The applicant must also demonstrate how disputes are managed within the corporate structure if they escalate, including escalation by the customer to EWOV.

Billing and collection

Applicants will be required to demonstrate that they are able to manage all aspects of the customer billing and collection processes. Key aspects of this include the demonstrated capacity to undertake:

- the provision of billing options for customers
- the generation of cyclical bills from meter readings or estimations
- interaction with distributors and NEMMCO

- the printing and dispatch of bills to customers consistent with the provisions of the Energy Retail Code
- receipting of payments received and management of late payments
- payment difficulties management process
- reconnection of supply (retailer and customer obligations, time to reconnect, charges), and
- processes for the recovery of unpaid debts.

Note: If the billing arrangements are outsourced, the Commission must be provided with a copy of the contract between the parties.

Appropriate management systems

Applicants must demonstrate that they have established appropriate financial, operational and administrative systems including maintenance of accounting requirements commensurate, at a minimum, with the Australian Accounting Standards.

Meter reading

The applicant must arrange for the appointment of accredited meter reading agents.

Provision of information to customers

Information on service offerings to relevant customers must be in line with the Energy Retail Code and should detail:

- customer obligations
- retailer obligations
- pricing information and options
- a customer charter (containing minimum service standards)
- contract terms (terms and conditions of contract, termination provisions)
- meter reading schedule and/or estimation arrangements
- details of billing (billing period, how bills are issued, contents of bills, basis of bills)
- bill error handling
- payment (terms of payment, methods of payment, advance payment, late payment, instalments, concessions)
- complaint handling and dispute resolution processes (retailer's obligations, customer's rights, procedure, access to the Energy and Water Ombudsman Scheme)
- termination of supply (procedure)
- reconnection of supply (supplier and customer obligations, time to reconnect, charges).

Privacy and confidentiality management

Applicants must demonstrate their capacity to maintain confidentiality of customer data and to comply with relevant Commonwealth and State privacy legislation. This is amplified in the relevant provisions of the Energy Retail Code, the Electricity Distribution Code, the Electricity Retail Market Rules, the Code of Conduct for Marketing Retail Energy in Victoria and all applicable guidelines issued by the Commission.

Customer information management system⁵

A customer information system should be able to handle data and communication required for reporting to the Commission and licensed electricity distributors. As a minimum this system should include the following information:

- customer contact details (including name, supply address, billing address and phone number)
- contract terms — prices and payment terms
- payments history (12 months)
- record of complaints
- consumption history
- billing history
- previous suppliers
- contact notes (record of each customer call)
- requests for no marketing information.

Management and compliance systems

Licence holders are expected to have a high commitment toward the overarching management of risk, governance and compliance. The Commission will require evidence of systems relating to corporate governance, risk management and compliance with the relevant Australian Standards. This will facilitate compliance testing, reviews and audits as required by the Commission and as specified in licences.

Section 5 Commercial-in-confidence information

In order to fully inform the public about the licence application, the Commission prefers that all information provided by the applicant can be made publicly available.

However, some sections of the application can be withheld from the public if warranted for commercial-in-confidence reasons. Any information submitted on a commercial-in-confidence basis should be attached as schedules to the application and be marked as commercial-in-confidence, together with an explanation as to why the information is marked as such. Applicants should include clear cross-

⁵ Retail licence applicants should be familiar with the Commission's Wrongful Disconnection procedures and related matters as specified on the website

references, identifying the section to which the commercial-in-confidence information relates.

Where the Commission considers that material has been inappropriately identified by an applicant as commercial-in-confidence, it will, at its discretion, discuss this request with the applicant if it considers that such information should be publicly disclosed, for example for the purpose of inviting submissions. The Commission will discuss this with the applicant prior to releasing such information; however its publication is at the discretion of the Commission.

SCHEDULE 2 APPLICATION FOR LICENCE TRANSFER

In addition to a Statutory Declaration, a transfer of licence application must also be accompanied by a declaration in the form set out below:

Transfer of licence

Section 31 of the Electricity Industry Act 2001

Upon the approval of the Essential Services Commission, the Transferor transfers to the Transferee the estate and interest in the Licence described for the consideration expressed.

Date of the approval of the Essential Services Commission, the day of 200...

Licence:

Consideration (\$)

Transferor:

Transferee:

Date:

Execution and attestation

Transferor:

Transferee:

SCHEDULE 3 STATUTORY DECLARATION

Statutory Declaration

I, *(insert name)*of *(insert address)* being the *(insert position)* of the Applicant, *(insert name of applicant)* **Hereby DECLARE** that the information contained in this application, and attachments thereto upon which I have placed my signature, for the grant of a *(insert type of licence applied for)* licence under the Electricity Industry Act 2001 is true and correct and that I make this declaration conscientiously believing the same to be true and in the belief that a person making a false declaration is liable to the penalties of perjury⁶

Declared at in the State of Victoria

Signature of Declarant

This day of day of 200

.....

.....

Before me

(A person authorised by section 107A of the Evidence Act 1958 (Vic))

⁶ Refer to section 107 of the Evidence Act