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PROCEDURES FOR APPLICATIONS FOR GAS LICENCES AND GAS LICENCE TRANSFERS

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1 | INTRODUCTION

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 gas distribution and retailing activities. A person is prohibited from engaging in the sale or distribution of gas either as a principal or as an agent unless that person holds a licence to undertake the activity or has received an exemption from the Governor-in-Council.

In undertaking this role, the Commission is guided by the provisions of the Gas Industry Act 2001 (GI Act) and the Commission's objectives under the Essential Services 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:

- 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 can demonstrate that it has technical capacity to be granted and maintain the licence, and
- the applicant can demonstrate that it is financially viable and access to sufficient financial resources

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

These Procedures set out the process that the Commission generally applies when assessing an application for a gas distribution or retail licence. The procedures are consistent with the provisions of section 26 (3) of the GI Act that permit the Commission to decide the Procedures that are to apply with respect to the issue of licences.

1.1 The application for a gas distribution or retail licence

An application for a licence must be in the format and contain all the information set out in the *Guidance Notes for Applications for Gas Applications and the Transfer of Existing Gas Licences*. The Guidance Notes can be found on the Commission's website: www.esc.vic.gov.au.

As is set out in the Guidance Notes, the applicant may need to provide any additional information required by the Commission or may be required to make changes to the form and content of the application.

While the Commission may assist an applicant in preparing its licence application prior to submitting it formally, the applicant bears complete responsibility to provide the Commission with accurate, truthful and relevant documentation.

The Guidance Notes also provide guidance to parties that wish to transfer a licence to another entity or party.

In this chapter, the Commission sets out the standard process that it will follow in assessing an application for licence. Where the Commission considers it necessary, the Commission may vary or modify the application process.

2.1 Lodgement requirements

Applicants must submit two copies of the application — one hard copy and one electronic copy. In the event of any discrepancy between the copies, the hard copy will prevail.

The hard copy of the application should be enclosed in a single envelope or other wrapping and should be marked: 'Gas Licence Application' and delivered to:

Manager, Licensing
Essential Services Commission
Level 2, 35 Spring St
Melbourne VIC 3000

The electronic version of the application including attachments should be e-mailed to the following address: licences@esc.vic.gov.au

2.2 Publication of the licence application

On receipt of the licence application and as is required by section 26(2) of the GI Act, the Commission will publish a notice in a newspaper, being a daily newspaper circulating generally in the State of Victoria (for example, *The Age*). The advertisement will invite the public to obtain a copy of the application and to make submissions. The Commission may also publish this notice in a local newspaper if it deems this is appropriate.

A copy of the application will also be published on the Commission's website. Registered industry stakeholders (including all other licensees) will be individually notified of the application by way of e-mail.

Where an application contains material that has been identified by the applicant as 'commercial-in-confidence' and the Commission agrees with that classification, this material will not be published or provided to third parties without the consent of the applicant. The Guidance Notes provide further discussion on the Commission's approach to commercial-in-confidence material.

2.3 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 individual consumers or groups.

All submissions received, except those that are commercial-in-confidence, are published on the Commission's website. Submissions are only accepted for publication on the Commission's website in accordance with the terms and conditions of publication (see www.esc.vic.gov.au).

The closing date for submissions will usually be a minimum of 2 weeks and a maximum of 4 weeks after the notice of the application is published. The Commission may vary this period depending on the particular application, and in particular, the relevant circumstances.

Once the closing date for submissions has passed, the Commission will notify the applicant in writing whether any submissions have been made and, if so, provide the applicant with copies of any published submissions and summaries of any unpublished submissions. The applicant will be provided with an opportunity to respond to the submissions and to clarify or respond to any issues raised in writing. The applicant will normally be provided with a minimum of 2 weeks and a maximum of 4 weeks in which to respond. The applicant may request additional time to respond.

2.4 Consideration of the licence application

Following the completion of the submission period, and the receipt of any response from the applicant in relation to the submissions, the Commission will consider the application.

The Commission considers all material relevant to an application, including all the material lodged in support of an application by an applicant, all submissions made by interested persons and any responses by the applicant to such submissions. The Commission may take into account material obtained from other sources and may seek advice from external consultants and others in relation to matters relevant to the application.

The Commission may also require an applicant to provide information or access to information in respect of the probity of the applicant and its senior management. An applicant will be required to demonstrate that it is a fit and proper person to hold a licence and that it possesses, and will continue to possess, the necessary technical and financial capacity in respect of any licence that may be issued. An applicant will be given an opportunity to respond to any adverse comments made by such consultants or information derived from external sources.

2.5 Notification of the decision

Applicants will be notified of the Commission's decision in writing and the decision will be posted on the Commission's website. The Commission will also publish its decision in the Victorian Government Gazette (see section 39-GI Act). Those who have provided submissions will be notified of the Commission's final decision in relation to the application.

In the event of a refusal to grant a licence, the Commission will provide to the applicant reasons for the refusal (see section 26(4)-GI 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. .