



Application by

**Hydro-Electric Corporation  
(ARBN 072377158)**

for an

**Electricity Supply Industry Generation  
Licence**

**REPORT OF THE REGULATOR**

**November 2004**



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# 1 INTRODUCTION

## 1.1 Background

The Regulator is empowered by the *Electricity Supply Industry Act 1995* (the Act) to consider and determine licence applications and issue licences. Under the *Electricity Supply Industry Regulations 1996*, a licence for generation operations is required; except where the generator is not connected to the power system and does not supply electricity for sale.

In January 1997, the Hydro-Electric Corporation [HEC] submitted an application for an electricity generation licence in accordance with the provisions of the *Electricity Supply Industry Act 1995*. That application has yet to be determined but, by virtue of section 4 of the *Electricity Industry Restructuring (Savings and Transitional Provisions) Act 1995* (EIR Act), HEC is the holder of a presumptive licence allowing it to continue the activities in which it was engaged immediately before the commencement of the EIR Act.

This presumptive licence continues until such time as a licence is issued to the HEC. In the meantime, in order to simulate as closely as possible the conditions which would have applied had the HEC been issued a licence, the HEC entered into an interim agreement with the Regulator. The interim agreement contains terms similar to those that would have been included in a licence issued by the Regulator. Accordingly, the HEC has been operating subject to obligations the same as those with which it would have had to comply had it been issued a licence by the Regulator.

On 6 April 2004, HEC wrote to the Regulator indicating that it sought determination of its application and the issue of an electricity generation licence for all its generating facilities on mainland Tasmania. This letter was provided as a supplement to the HEC's original generation licence application dated 31 January 1997 and included additional information required by the Regulator to enable the making of a determination.

The generating plant, in respect of which the HEC applied for a licence, has an aggregate generating capacity of approximately 2265 MW.

This report is issued in accordance with the Regulator's *Information for Licence Applicants: Electricity Industry Guideline No. 1* (the Guideline). The Guideline provides that once the Regulator has made a decision on a licence application, the Regulator will issue a report summarising the substance of public submissions received and stating the decision and the reasons for it.

## 1.2 Electricity Supply Industry Act 1995

The two key issues upon which the Regulator must be satisfied before a generation licence may be issued under the Act are:

- (a) the applicant is a suitable person to hold the licence; and

- (b) the proposed generating plant will generate electricity of the appropriate quality for the relevant transmission or distribution network.

The responsibility of the Regulator is bounded by the powers and functions conferred by the Act. The Regulator may only have regard to matters which relate to areas of the Regulator's interest as provided for in the Act.

### **1.3 Consultation**

The Guideline provides that the Regulator will place, in the three Tasmanian daily newspapers, a notice of a licence application, inviting written submissions on the application.

The Regulator determined that the application for a generation licence should be advertised and submissions sought.

The application was advertised in the three Tasmanian daily newspapers on Saturday 15 May 2004. In order to assist members of the public in making submissions, the Regulator published an Issues Paper in respect of the application, however, no submissions were received in response to the advertisements.

In anticipation of entry into the National Electricity Market [NEM] in May 2005, the Regulator has been undertaking a review of licences held by entities operating in the Tasmanian electricity industry.

This review included an identification of issues arising from NEM entry and proposed a number of amendments to the licences of the various entities, including the inclusion of clauses dealing with emergency management and the provision of information and assistance to the Reliability and Network Planning Panel.

It was considered appropriate to consider these clauses for inclusion in the HEC licence. While they were not the subject of specific public consultation in relation to the HEC application, submissions covering these clauses were received from various parties, including HEC, in response to the Regulator's consultation on the general licence review.

A report of the Regulator's consultation on the review of licences is available on the Regulator's website at <http://www.energyregulator.tas.gov.au>.

## **2 REGULATOR'S DECISION AND REASONS**

### **2.1 Regulator's decision on the application**

The Regulator has decided to issue an electricity generation licence to the Hydro Electric Corporation.

### **2.2 Reasons for Regulator's decision**

The Regulator's Office has undertaken a "due diligence" assessment of the licence application. As a first step, that involved assessing whether or not the HEC had complied with the procedural requirements for the making of a licence application. Furthermore, the due diligence process involved the Regulator determining whether or not he was satisfied as to the more substantial issues of the HEC's suitability to hold a licence and its ability to generate electricity of the appropriate quality.

#### **2.2.1 Compliance with procedural requirements**

Section 18(1) of the Act provides, in part, that an application for a licence -

- (a) must be made to the Regulator in a form approved by the Regulator and contain the information specified in the form; and
- (b) must identify the applicant's officers and, if applicable, its major shareholders; and
- (c) must –
  - (i) if authority for generation of electricity is sought, contain details of the generating plant or proposed generating plant, identify the transmission or distribution network to which the generating plant is to be connected and describe how the connection is to be made; and
  - (ii) ... ; and
  - (iii) ... ; and
  - (iv) ... ; and
  - (v) ... ; and
  - (vi) must be accompanied by the application fees required under the regulations.

Paragraphs 18(1)(c)(ii), (iii), (iv) and (v) are not relevant to this application and no application fee has been prescribed by regulations.

The Regulator has not specified a form of application and prefers to deal with applications on a case by case basis, however, applications are required to be made in writing.

The generation licence application complied with the procedural requirements for making an application for a licence under the Act.

### **2.2.2 Suitability of applicant to hold the licence**

Section 19(3) of the Act provides that, in deciding the issue of suitability to hold a licence, the Regulator may consider the following factors:

- (a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (section 19(3)(a));
- (b) the financial, technical and human resources available to the applicant (section 19(3)(b)); and
- (c) the applicant's officers and major shareholders and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations) (section 19(3)(c)).

The Regulator has made relevant enquiries and is satisfied that the HEC is a suitable person to hold a licence.

### **2.2.3 Generation of electricity of the appropriate quality for the relevant transmission or distribution network**

The due diligence analysis identified the following risks relating to generation of electricity of the appropriate quality:

- (a) impact on the quality of supply to local customers;
- (b) network integrity; and
- (c) system security.

Due to the excess of the HEC's generation capacity over the peak demand for electricity in Tasmania and the capability to bring additional generation on-line at short notice in the event of a failure, the probability of these risks arising in the operation of the HEC's generating plant has been assessed as being low and the consequences of such risks as medium.

The Regulator is of the view that these risks are appropriately managed by the HEC entering a connection agreement with the relevant Network Service Provider<sup>1</sup> (ie. Transend Networks Pty Ltd or Aurora Energy Pty Ltd, as appropriate) and the HEC

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<sup>1</sup> A Network Service Provider is defined in the Code as a person who engages in the activity of owning, controlling, or operating a transmission or distribution system and who holds or is deemed to hold a licence or has been exempted from the requirement to obtain a licence by a regulation under the Act.

being obliged to comply with the Tasmanian Electricity Code (the Code) and the System Controller's directions.

The Regulator is satisfied that there are sufficient commercial and regulatory drivers in place such that Transend and Aurora will not allow HEC generating plant to be connected to their networks unless an appropriate connection agreement is in place.

The HEC licence provides that the HEC must comply with the Code and the System Controller's directions.

The Regulator is therefore satisfied that the generating plant will generate electricity of the appropriate quality for Transend's transmission network and Aurora's distribution system.

The approach taken by the Regulator in relation to this licence, as in all licences, has been "light handed", in that the Regulator has not sought to intervene in the day-to-day management of the HEC. Rather, the licence seeks to ensure that all stakeholders are provided with sufficient information to assess properly the performance of the HEC in meeting its regulatory obligations.

The fundamental elements of the licence are:

- the provision of relevant management plans to the Regulator;
- compliance with the Tasmanian Electricity Code;
- payment of fees and charges;
- reporting obligations;
- emergency management; and
- the provision of such assistance as the Reliability and Network Planning Panel may require.

In addition to the conditions specified in the licence document, the HEC is also obliged to comply with various statutory obligations, such as those specified in section 22(1) of the Act, which apply to licensees generally.

## **2.3 Conclusion**

The Regulator was of the opinion that the HEC had satisfied all the procedural and mandatory criteria provided for in the Act in relation to the issue of a licence for generation operations.

The Regulator was also of the view that the application for the Licence was consistent with the objectives of the Act and the objectives of the Regulator in exercising his powers and functions under the Act.

Accordingly, the Regulator determined to issue a generation licence in accordance with the HEC's application and the licence was issued on 26 November 2004.

A copy of the Licence has been placed in the Public Register and is available on the Regulator's website at <http://www.energyregulator.tas.gov.au>.