

# ELECTRICITY WHOLESALE LICENCE APPLICATION

## 1. General Information – The Applicant

### 1.1 Legal name of applicant

State the full legal name of the applicant. The applicant is the person who will be generating electricity and/or selling (wholesale) electricity that will be the subject of the licence.

Name: *Y.E.S. Energy (SA) Pty Ltd<sup>1</sup>*

### 1.2 Legal identity of applicant

Provide the applicant's ABN and ACN (where relevant) and information about the applicant (for example, whether the applicant is a private limited company, trust, or joint venture).

ABN: *22 627 706 594* ACN: *627 706 594*

Type of entity: *Company*

### 1.3 Contact details and address of the applicant

#### The applicant

Business address: *67 Greenhill Road Wayville*

State: *South Australia* Postcode: *5034*

Postal address (if different):

State: Postcode:

Full name of contact person: *Mark Yates*

Position title: *Director*

Telephone: Mobile:

Email:

### 1.4 Diagram of corporate and organisational structure

Attach a diagram illustrating the corporate structure, including details of any related companies within the meaning of the *Corporations Act 2001* and the organisational chart. Provide a diagram of the:

<sup>1</sup> The applicant is also referred to in this application as YES Energy.

- a) corporate structure (including any parent and related companies within the meaning of the *Corporations Act 2001*), and

**Attachment reference:** *Confidential Attachment 1 - Corporate Structure*

- b) organisational chart (including composition of the board, management, and other key personnel responsible for the key functions).

**Attachment reference:** *Confidential Attachment 2 - Organisational Chart*

## 1.5 The licence

If the applicant is seeking for a licence to be issued by a certain date, identify this date.

**Note: we do not undertake to issue the licence by this date.** The applicant should usually allow a minimum of eight to 10 weeks **once we consider the application to be complete**. An application is considered complete once we have all the information needed for the Commission to make a decision. In other words, when we have no need to request further information from the applicant. This includes a public consultation period of four weeks (generally) as part of our consideration of licence applications.

### Provide details on the following:

Date from which licence is sought: *1 August 2023.*

Type of generation: *Not applicable since the application is for an electricity wholesale licence covering any small generating unit which the applicant, as a Small Generation Aggregator (SGA) under the National Electricity Rules (Rules), has classified as a market generating unit under the Rules.*

Expected name plate capacity: *Not applicable.*

Location of generation facility: *Not applicable.*

Details of how the generator will be connected to the network:

*Not applicable.*

## 2. Technical capacity

### 2.1 Experience and knowledge of the industry

Provide information about the human resources available to the applicant. This includes:

- a) The experience and qualifications of those employees outlined in the organisational chart (see 1.4b);

Mark Yates, Managing Director

*15+ years of experience in Australian energy markets, in the construction and management of over 150 renewable assets and HV infrastructure including substations and other associated network assets.*

Hamish Dillon, Head of Commercial Energy

*15+ years of experience in Australian energy markets, fulfilling a variety of roles including:*

- *Electricity Trading Manager at major vertically integrated market participant, responsible for managing forward commodity portfolio*
- *Independent Energy Consultant with a primary focus on helping large energy users manage costs and meet energy and sustainability objectives.*

*In addition, is a regular contributor to market development or market education committees or events, including:*

- *Being a member of the SA Power Networks Tariff Working Group*
- *Keynote speaker at the 2019 National Renewables in Agriculture conference*
- *SA representative on the Federal Government's National Energy Guarantee technical work group*
- *Member of the 2015 SA Government's Energy Market Roundtable, formed in response to market disruption following the announcement of the closure of Northern Power Station*

*Significant experience in:*

- *Portfolio management, within large, complex energy portfolios*
- *Risk management*
- *Large user retail structuring/pricing*
- *Trading in financial instruments*
- *Structuring and negotiating bilateral agreements with major market participants and large energy users, including PPAs, structures supporting retail entry, demand response etc.*

- *Structuring and negotiating alternative risk management instruments, such as weather derivatives*
- *Involvement in major business development initiatives, including business acquisition, asset development/disposal/retirement etc.*
- *Negotiating and structuring large user retail agreements*
- *New business development*

*Blake Williams, CFO*

*Blake is a Chartered Accountant with over 25 years' experience in energy and consumer goods. Blake has been the CCO and CFO of YES Energy and its associated company YES Group for 4 years with strength across financial, legal, commercial, operations and reporting/compliance.*

*Haydn Yates, Operations Risk Manager and Compliance*

*Haydn is formerly SA GM of a publicly listed national construction business, prior to joining YES Energy as Head of Operations. In 4 years at YES Energy, Haydn has implemented business system improvements across electricity system billing systems, integration and reconciliation with AEMO and DNSP, compliance and risk management and process improvements.*

- b) If the applicant will employ contractors or agents to assist with the licensed activities, the name of those contractors or agents, details about the experience of the contractors or agents in such operations and details of the processes in place to ensure the contractors or agents comply with the licence conditions, including relevant regulatory obligations

*The applicant will not employ any such contractors or agents.*

Where the applicant is relying on a third party to provide staff and/or resources to meet the technical capacity requirements of the wholesale licence, provide:

- c) the experience and qualifications of any relevant key employees who will manage those systems and processes;

*The applicant is not relying on any such third party.*

- d) if the applicant will engage third parties to assist with the licensed activities, provide the following information in relation to each third party:
- (i) the name of that third party
  - (ii) the scope of activities undertaken by the third party
  - (iii) details and copies of any agreements for the provision of services
  - (iv) details about the experience of the third party in relation to the activities that it will be undertaking, including any accreditations
  - (v) details of the processes in place to ensure the third party complies with the licensee's regulatory obligations.

*The applicant is not relying on any such third party.*

**Attachment reference:** *Not applicable.*

## **2.2 Risk management**

- a) Provide confirmation and evidence that the applicant has identified the risks associated with electricity wholesale operations. Additionally, provide evidence that the applicant has established, utilised and relied upon risk management systems and processes which are adequate, accurate and current to address those risks.
- b) Provide a copy of the applicant's risk management strategy. A statement should also be provided (or supporting document must make it clear) whether the strategy has been developed in line with any Australian or International Standard (for example, ISO 31000:2018).
- c) Provide a copy of a risk register that identifies risks, controls and mitigations.

*The applicant will follow its Risk Management Policy in undertaking the licensed activity. The Policy was developed in line with AS ISO 31000:2009. In accordance with the Policy, the applicant has identified the risks arising from the undertaking of the licensed activity and recorded them in a risk register which also includes the controls and mitigants applicable to each of the identified risks.*

**Attachment reference:** *Confidential Attachment 3 - Risk Management Policy  
Confidential Attachment 4 - Risk Register*

## **2.3 Registration with the Australian Energy Market Operator and generator performance standards**

Advise if the applicant will apply to register with the Australian Energy Market Operator (AEMO). If so, provide evidence of registration or exemption, or intending registration or exemption (for example, correspondence between the applicant and AEMO). If the applicant is not registering with AEMO, describe why that is the case.

*The applicant is registered with AEMO as a Small Generation Aggregator.*

**Attachment reference:** *Public Attachment 1 - AEMO Registration Letter.*

Provide confirmation from AEMO that proposed negotiated generator performance standards will meet requirements for power system security and reliability under the National Electricity Rules.

*Not applicable.*

## **2.4 Licences held in other jurisdictions**

If the applicant holds, or has previously held, electricity and/or gas licences or authorisations in other jurisdictions provide details. If a licence or authorisation previously held has been suspended or cancelled, provide details.

*The applicant hold an electricity retailer authorisation under the National Energy Retail Law.*

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*The applicant previously held a South Australian electricity generation licence authorising the operation of a number of solar PV generating plants. This licence was surrendered effective 14 December 2021.*

**Attachment reference:** *Public Attachment 2 - AER Electricity Retailer Authorisation.  
Public Attachment 3 - ESCOSA Electricity Generation Licence Surrender*

## **2.5 Previous unsuccessful licence applications in other jurisdictions**

Confirm whether the applicant has applied for an electricity or gas licence in another jurisdiction and not been issued with a licence or authorisation, provide details.

*The applicant has not unsuccessfully applied for any electricity or gas licence in any other jurisdiction.*

## **2.6 Licences held by associates of the applicant**

If an associate (within the meaning of the *Corporations Act 2001*) holds an electricity or gas licence in Victoria or in other Australian jurisdiction, provide details.

*No associate holds any such electricity or gas licence.*

## **2.7 Compliance management**

- a) Provide evidence of compliance management which demonstrates how the compliance systems the applicant has (or will have) in place will ensure compliance with all the relevant regulatory obligations required by an electricity generation licence.
- b) Provide a copy of the applicant's compliance management strategy. A statement should also be provided (or supporting document must make it clear) whether the strategy has been developed in line with any Australian or International Standard (for example, AS ISO 19600:2015).

*The applicant will follow its Compliance Policy in undertaking the licensed activity. The Policy was developed in line with AS ISO 19600-2015. In accordance with the Policy, the applicant has identified the compliance obligations it will have undertaking of the licensed activity and recorded them in a compliance register which also includes the controls applicable to each of the identified obligations.*

**Attachment reference:** *Confidential Attachment 5 - Compliance Policy  
Confidential Attachment 6 - Compliance Register*

## **2.8 Material agreements**

Provide copies of agreements entered into, or intended to be entered into, by the applicant that are material to the undertaking of the electricity generation activity. Agreements that are material to the undertaking of the electricity generation activity may include:

- a) Connection agreements, such as a Generator Connection Agreement and Generator Project Agreement with a generation facility.
- b) Any contract concerning the construction and delivery of the project (sometimes commonly referred to as a Project Construction and Coordination Deed (PCCD) or Engineering, Procurement and Construction Agreement).

- c) Any Network Services Agreements.
- d) Any contracts concerning the managerial aspects of the activity (sometimes commonly referred to as a Management Services Agreement or Asset Management Agreement).
- e) Any contract concerning the ongoing operations and maintenance of the transmission assets (sometimes commonly referred to as an Operations and Maintenance Agreement).
- f) Any contract concerning the sale of electricity from the generator under a Power Purchase Agreement.

*With the exception of the last of them, the applicant is not party to any of the preceding agreements since it is not the owner of the small generating units for which it is to be SGA and therefore is not to be a licensed electricity generator. Rather, the application is for an electricity wholesale licence. The agreement most relevant to the licensed activity is the power purchase agreement that the applicant will have with owners of those small generating units.*

**Attachment reference:** *Confidential Attachment 7 - Template Power Purchase Agreement.*

## **2.9 Engagement with Energy Safe Victoria**

Provide details about the applicant's engagement with Energy Safe Victoria and any copies of correspondence regarding the proposed electricity generation facility.

*No engagement with Energy Safe Victoria is required in connection with the activities authorised by an electricity wholesale licence.*

**Attachment reference:** *Not applicable.*

## **2.10 Additional information**

Provide any additional information the applicant considers relevant to the Commission's assessment of the applicant's technical capacity.

*None.*

### **3. Financial viability**

#### **3.1 Financial resources**

The applicant must provide a statement that will be made available to the public during the consultation period that the applicant has the financial resources to commence and sustainably perform the relevant licensable activities.

Provide a statement to confirm that:

- a) the applicant is financially viable and has the financial resources to sustainably operate the electricity generation facilities, and
- b) the applicant will be a registered market participant with the Australian Energy Market Operator for its electricity generation activities, therefore subject to the prudential requirements under the National Electricity Rules.

The Commission reserves the right to conduct a financial viability assessment and require the applicant to produce information and documents it considers appropriate to complete such an assessment.

*The preceding statement presumes that the application is for an electricity generation licence.*

*The applicant instead confirms that:*

- a) *the applicant is financially viable and has the financial resources to sustainably undertake the sale of electricity under an electricity wholesale licence; and*
- b) *the applicant is a registered market participant with the Australian Energy Market Operator for its electricity wholesale activities and is therefore subject to the prudential requirements under the National Electricity Rules.*



## 4. Fit and proper person

In deciding whether to grant or refuse a licence application, the Commission will consider whether the applicant is a fit and proper person to hold a licence in Victoria.

The concept of a 'fit and proper person' is established by common law and takes its meaning from its context, from the activities in which the person is or will be engaged, and the ends to be served by those activities.

In considering whether an applicant is a fit and proper person, we will have regard to the applicant's honesty, integrity and reputation. These are relevant factors as they can inform an assessment of the likelihood of future conduct.

We will also consider the conduct of directors, office holders or any person with significant managerial duties or influence. We will also consider the conduct of related bodies corporate or entities that can exert control over the applicant.

- a) Have any directors of the applicant, directors of any entity that can exert control over the applicant, or any person with significant managerial responsibility or influence on the applicant:
- (i) been declared bankrupt,
  - (ii) had their affairs placed under administration,
  - (iii) been disqualified from managing a company,
  - (iv) been subject to debt judgements, or
  - (v) insolvency proceedings (including any administration, liquidation or receivership in connection with the affairs of a company)?

If yes, provide details:

No.

- b) Has the applicant, any directors of the applicant, directors of any entity that can exert control over the applicant or any person with significant managerial responsibility or influence on the applicant been prosecuted for any offences or had any enforcement action taken under any state, territory, Commonwealth or foreign legislation (including, but not limited to, the *Competition and Consumer Act 2010*, *Corporations Act 2001*, or the *Australian Securities and Investments Commission Act 2001*)?

If yes, provide details:

No.

- c) Has the applicant, any directors of the applicant, any related body corporate, or any person with significant managerial responsibility or influence on the applicant been involved in any material breaches of obligations regulated by the Commission or any other regulator?

If yes, provide details:

No.

- d) Has the applicant, any directors of the applicant, any related body corporate, or any person with significant managerial responsibility been under investigation in relation to its regulatory obligations or is currently bound by an enforceable undertaking?

If yes, provide details:

*No.*

- e) Has the applicant, any related body corporate or any person with significant managerial responsibility or influence on the applicant, been refused a licence or authorisation, or had restricted, suspended or revoked any such licence or authorisation (in any jurisdiction)?

If yes, provide details:

*No.*

- f) Provide any other information the applicant considers relevant to the Commission's fit and proper person assessment.

*None.*

#### **Additional information**

Answer the following questions and, where the answer to any question is "no" (except for question b)), provide further detail.

- a) Is the applicant a resident of, or does it have permanent establishment in, Australia?

*Yes.*

- b) Is the applicant under external administration (as defined in the *Corporations Act 2001*) or under a similar form of administration under any laws applicable to it in any jurisdiction?

*No.*

- c) Is the applicant immune from suit in respect of the obligations under the *Electricity Industry Act 2000*?

*No.*

- d) Is the applicant capable of being sued in its own name in a court of Australia?

*Yes.*

## 5. Commission objectives

In deciding whether to grant or refuse an electricity generation licence application, the Commission must consider its objectives under the *Electricity Industry Act 2000* and the *Essential Services Commission Act 2001* (ESC Act).

Our primary objective under the ESC Act, when performing our functions and exercising our powers, is to promote the long-term interests of Victorian consumers. In seeking to achieve this objective, we must have regard to the price, quality, and reliability of essential services and the matters set out in section 8A to the extent they are relevant.

In seeking to achieve the objectives specified in section 8, the Commission must have regard to the matters to the extent that they are relevant in any particular case.

Provide any information the applicant considers relevant to the Commission's consideration of its objectives outlined in:

- Section 8 of the ESC Act (also see section 8A of the ESC Act); and
- Section 10 of the *Electricity Industry Act 2000*.

*The SGA framework was established under the National Electricity Law and the Rules to allow the owners of small generating units to have the additional option of selling electricity from those units to an SGA instead of to an electricity retailer or other Market Customer. An SGA has access to the National Electricity Market (NEM) spot price without each small generating unit owner having to register with AEMO. This framework was designed to reduce the barriers to small generation being able to directly participate in the NEM.*

*Victoria alone requires SGAs also to be licensed.*

*Granting the applicant an electricity wholesale licence, therefore, will allow the applicant to operate as an SGA in Victoria on the same basis as it is already doing in other jurisdictions in which the National Electricity Law and National Electricity Rules apply, contributing to the objectives of the SGA framework in Victoria, by providing the owners of small generating units to sell their electricity to the applicant without each of them having to register with AEMO as generators.*

*This will advance matters relevant to the Commission and its objectives, including:*

- *efficiency in the electricity industry and incentives for long term investment;*
- *competition within the electricity industry;*
- *environmental legislation applying to the electricity industry. In particular, the applicant intends to act as SGA for small wind farms and solar farms, contributing to the achievement of renewable energy targets under and the objectives of the Renewable Energy (Jobs and Investment) Act 2017 (Vic); and*
- *consistency in regulation between States including Victoria and on a national basis.*

**6. Statutory declaration**

### Statutory Declaration

I, Mark Ryan Yates, of 9A Murtho Street, Renmark, South Australia, make the following statutory declaration under the *Oaths and Affirmations Act 2018 (Vic)*:

- a) I am the director of Y.E.S. Energy (SA) Pty Ltd;
- b) The information provided in this application (including any attachments) to the Essential Services Commission for an electricity wholesale licence is true and correct; and
- c) I believe Y.E.S. Energy (SA) Pty Ltd has the financial resources to commence and operate the activities the subject of the licence.

and I make this declaration conscientiously believing these matters to be true and knowing that making a statutory declaration that I know to be untrue is an offence.

I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Signature: .....

Declared at: ..... ADELAIDE, SOUTH AUSTRALIA

on ..... 21<sup>ST</sup> MAY 2023 .....

### Witness

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

Signature: .....

on ..... 31<sup>ST</sup> MAY 2023 .....

Name ..... MICHAEL RONALD GARRY

Address ..... LEVEL 5, 121 KING WILLIAM ST, ADELAIDE, SOUTH AUSTRALIA

Qualification ..... SOLICITOR .....

A person authorised under section 30(2) of the *Oaths and Affirmations Act 2018 (Vic)* to witness the signing of a statutory declaration.