



ICRC

independent competition and regulatory commission

Applying for a utility service licence in the
ACT:
procedures and checklist

October 2012

This page has been left intentionally blank

Contents

Information sources	1
Form of application	1
How to lodge an application	1
Application fee	2
Checklist: Content of application	2

Information sources

Before preparing an application for a licence to provide a utility service in the Australian Capital Territory, applicants should be familiar with the following:

- *Guidelines on technical and prudential criteria for licence applications under the Utilities Act 2000*
- *Regulatory framework for licensing utilities in the ACT*
- the *Utilities Act 2000* and associated regulations and statutory instruments
- the applicable industry and technical codes and guidelines developed under the Utilities Act
- the standard form of licences granted under the Utilities Act.

The documents can be accessed from the Commission's website (www.icrc.act.gov.au). The Utilities Act and associated regulations and statutory instruments are available at www.legislation.act.gov.au/a/2000-65/default.asp.

Form of application

The application must include the information specified in the checklist below (see Checklist: Content of application). The applicant must provide sufficient information in support of its application to support the Commission's assessment process. It is the responsibility of the applicant to ensure that its application provides adequate and accurate information, and to seek legal, financial and other technical advice as appropriate.

The applicant should note that the Commission may, by notice in writing, require the applicant to provide further information or documents that the Commission reasonably requires to determine the application.

It is an offence under the *Criminal Code 2002* (ACT) for a person to give to the Commission, whether orally or in writing, information that is known to that person to be false or misleading in a material particular, unless the person informs the Commission of that fact. The maximum penalty for such an offence is 100 penalty units, imprisonment for one year, or both.

How to lodge an application

The applicant should provide two copies of the application—one hard copy and one electronic copy. In the event of variation between the two documents, the hard copy will be taken to be the formal application.

The hard copy of the completed application should be sent to the Commission at either of the addresses below:

Independent Competition and Regulatory Commission
PO Box 161
Civic Square ACT 2608

Level 8, 221 London Circuit
Canberra City ACT 2601

The electronic copy of the completed application should be sent to the Commission at icrc@act.gov.au.

The Commission may be contacted at the above addresses, by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au.

Application fee

The applicant should note that an application fee is payable (\$1,500 for the consideration of one licence type and \$250 for the consideration of the grant of an additional licence as part of a single application). The application fee is exempt from GST. The applicant should contact the Commission and the Commission will issue an invoice with details on how the application fee can be paid.

An application will not be considered until the application fee has been received.

Checklist: Content of application

The following checklist is designed to help those applying for a utility services licence in the ACT provide all the information needed for the Commission to assess their applications against the criteria set out in detail in *Guidelines on technical and prudential criteria for applications under the Utilities Act 2000 (ACT)*.

When supplying the information in the checklist, applicants should refer to the guidelines for more detailed explanations of the information required to ensure that they understand the full extent of the information needed. The numbers in the first column of the checklist are references to the relevant sections in the guidelines.

Applicants should provide the required information in the order set out in the checklist, using the same headings. Under the 'Attachments' subheading, they should provide details of the documentary evidence they have provided as attachments, or indicate that none is provided for that heading. For example, if they provide an attachment evidencing their registration with the Australian Energy Market Operator, they should refer to the number or letter that they have given that attachment in the text.

Applicants are also encouraged to provide any other evidence that would support their application (Attachment A of the guidelines gives some examples).

Checklist

Guidelines (section)	Information requirement
1	Preliminary information requirements
1.1	Current legal identity of the applicant Full legal name of the applicant, including company extensions. Trading name in which the licence is sought (if different from the above). Applicant's ACN (if applicable) or ARBN. Applicant's ABN. Applicant's registered office address. Applicant's address for correspondence and contact details (including a nominated contact person to whom the Commission may direct queries in relation to the application and/or requests for supplementary information).
1.2	Nature of application Utility service or services for which the licence is sought. Nature and scope of proposed operations or networks. Type of customer intended to supply. Date on which the applicant intends to enter the market. Term of the licence.

1.3

Equity structure of the applicant

If the applicant is part of a group of related companies, and/or party to a partnership, joint venture or alliance agreement with another company:

- details of the ownership structure of the group, including proportions of equity held. (This should be traced through any corporate shareholders to the individual, natural persons who are the ultimate beneficial owners of the company)
- details of the contractual arrangements (eg alliance contracts, associate contracts, establishment contracts) that define relationships within the group—shared resources, guarantees, revenue flows, obligations and/or responsibilities etc
- consolidated audited financial statements for the group.

List attachments

2

Prudential criteria

2.1

Applicant's fitness to hold a utility licence

2.1.1

Good character

Details of any offences or successful prosecutions under any territory, state or Commonwealth legislation that are relevant to the applicant's capacity as a utility licensee, or written confirmation that the applicant has not committed any such offences against, or been prosecuted under, any such legislation.

List attachments

Details of any concurrent applications by the applicant, or a company related to the applicant, for utility licences in other Australian jurisdictions.

List attachments

Details of utility licences held by the applicant, or a company related to the applicant, in other Australian jurisdictions, including details of:

- any additional/special licence conditions
- any suspensions/revocations of a licence
- any past/present administrative or legal actions in relation to a licence.

List attachments

Details of any unsuccessful utility licence application by the applicant,

**Guidelines
(section)****Information requirement**

or a company related to it, in other Australian jurisdictions, including details of the reasons given for refusal of the utility licence.

List attachments

Additional information to assist the Commission in its consideration of the applicant's character and past performance.

List attachments

2.1.2**Probity and competence of officers**

Full names and current contact details of all officers of the applicant.

List attachments

Details of policies and procedures addressing the probity and competence of officers of the applicant.

List attachments

Additional information to assist the Commission in its consideration of the character and past performance of the applicant's officers including but not limited to most up to date curriculum vitae.

List attachments

2.1.3**Risk management strategy**

A written declaration from the Chief Financial Officer (or Chief Executive Officer) confirming that the applicant has in place a Risk Management Strategy that is maintained and operated in accordance with AS/NZS ISO 31000:2009: Risk Management – Principles and Guidelines, covering the applicant's operations within the ACT and in any other jurisdictions in which the applicant operates. Where elements of the applicant's risk management strategy are controlled by another company within the group, these elements should be identified.

List attachments

A certificate of currency from the applicant's insurer confirming that the applicant has insurance appropriate to its size and operations.

List attachments

Any additional information in support of the applicant's ability to manage risk and operate in accordance with the Commission's

objectives under the *Utilities Act 2000*.

List attachments

2.2 Applicant's financial capacity to meet licence obligations

2.2.1 Financial resources

A written declaration from the Chief Financial Officer (or Chief Executive Officer) stating that the applicant is a going concern and that the officer is not aware of any factor that would affect the applicant's ability to securely finance the activities to be performed under the proposed licence over the next 12 months.

List attachments

A written declaration from an independent auditor or the applicant's principal financial institution stating:

- that the applicant has not been deregistered, wound up or dissolved, is not in receivership or under external administration, and has not made arrangements with creditors
- that it is not aware of any factor that would affect the applicant's ability to securely finance the activities to be performed under the licence over the next 12 months
- that the applicant's current financial commitments are appropriate to its size and reserves.

List attachments

Audited financial statements of the applicant for the last three years (or, if the applicant has been in existence for less than three years, all statements released to date) including:

- balance sheet
- profit and loss statement
- statement of cash flows (short- and medium-term)
- notes to financial statements (disclosure required by the regulations, notes required by the accounting standards, and any other information necessary to give a true and fair view)
- director's declaration that the financial statements comply with accounting standards, give a true and fair view, and have been made in accordance with the *Corporations Act 2001* (Cth), and that there are reasonable grounds to believe the company/entity will be able to pay its debts as and when they fall due and payable

**Guidelines
(section)**

Information requirement

- director's report
- auditor's report.

List attachments

An applicant that has been in existence for less than 12 months (and has not yet released audited financial statements) should provide:

- budgeted financial statements for the next three years
- a comprehensive business plan, including its strategic direction and objectives, identified opportunities in the marketplace, forecast results, benchmarks, and the impact of differing assumptions or scenarios on its financial position.

List attachments

Additional information to assist the Commission in its consideration of the applicant's financial capacity to meet the requirements of, and its reasonable foreseeable obligations under, the proposed licence.

*List attachments***2.2.2****Additional considerations supporting financial capacity****2.2.2.1***External ratings agencies*

Evidence of long- and/or short-term credit ratings from Standard & Poor's or Moody's Investors Services (where available).

*List attachments***3****Technical criteria****3.1****Licence conditions**

Details of the applicant's compliance plan, outlining:

- its knowledge and understanding of the applicable licence conditions, including all statutory, industry and technical requirements
- how it will meet all applicable licence conditions, including all statutory, industry and technical requirements
- the extent to which its operational functions and activities (eg complaints handling, engineering services, monitoring and testing services, network operations and maintenance facilities) will be established within the ACT; if it will have no presence in the ACT or will conduct only some aspects of its operations within the ACT, how it proposes to ensure that it provides adequate levels of

service and asset maintenance. Where functions are to be established partly in the ACT, and partly in another jurisdiction (eg where the operations of a small ACT call centre are to be supplemented by larger interstate call centres), this should be explained.

List attachments

Where applicable, what network asset management system the applicant proposes to employ and what systems improvement it will undertake if its current system does not meet the requirements.

3.2

Experience of the applicant

As applicable:

- dates and locations of all utility operations
- type of utility service provided (electricity, gas, water, and/or sewerage, transmission, distribution, connection and/or supply)
- scale of operation (number of customers, network size and capacity)
- details of involvement in network planning, network design, total asset management, network operation and/or other relevant specialist services (eg testing services), and whether those activities were undertaken in relation only to pipe or cable assets, or also included special or complex network components (eg substations, pump stations, treatment plants, dams)
- an explanation of which activities and functions were conducted in-house, and which were undertaken under contract to another entity acting as an agent of the applicant
- details of any current quality assurance accreditations.

The relevance of the applicant's experience to the requirements of the *Utilities Act 2000*, applicable industry and technical codes, guidelines and the conditions of an ACT utility licence should be clearly demonstrated.

List attachments

3.3

Human resources

A summary of the technical skills and experience of officers of the applicant, and the relevance of those skills and experience to meeting the requirements of the licence.

List attachments

The number of employees.

List attachments

Details of the applicant's human resources policies governing technical qualifications, including:

- experience and technical qualifications of employees in such operations
- relevant industry licences or qualifications
- training policies and programs.

List attachments

3.5

External resources

If the applicant is to rely on another entity to provide staff and resources to meet the technical requirements of its licence:

- a statement of all functions and activities the applicant proposes to outsource
- details of any formal agreement to provide services, including confirmation that the relevant technical competencies will be available to the applicant at all times.
- details of the other entity's experience in and knowledge of the relevant industry.
- evidence of the other entity's technical capacity to meet the relevant requirements of the licence, including any relevant accreditations.

List attachments

Final checks

Have you paid the application fee (see Application fee)?

Have you checked that all the attachments you have listed are as labelled and are attached?