

# APPLICATION

## Electricity Retailer Authorisation

Positive Energy TM  
L3 29 King William Street  
Adelaide SA 5000



This authorisation application for electricity is submitted for the attention of:

General Manager  
Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
MELBOURNE VIC 3001

An electronic copy of this application has also been emailed to [AERauthorisations@aer.gov.au](mailto:AERauthorisations@ aer.gov.au)



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## **1.0 GENERAL PARTICULARS**

### **1.1 APPLICANT**

The applicant is Positive Energy TM Pty Ltd

### **1.2 ABN OR ACN**

ACN is 614 084 374 (Please refer to Appendix A: Certificate of Incorporation).

### **1.3 REGISTERED ADDRESS AND FOR CORRESPONDENCE**

L3 29 King William Street, Adelaide, SA

### **1.4 NOMINATED CONTACT PERSON**

Name: Martin Burns | Position: Director | Contact details: L3 29 King William Street, Adelaide, SA

### **1.5 FORM OF ENERGY FOR WHICH A RETAILER AUTHORISATION IS SOUGHT**

Electricity

### **1.6 DATE YOU INTEND TO COMMENCE RETAIL OPERATIONS**

1 August 2017.

### **1.7 NATURE AND SCOPE OF THE OPERATIONS PROPOSED**

The applicant will be retailing electricity to small and large consumers both in the residential and business sector. Initial retail markets are South Australia and New South Wales with a view to expanding into all NEM jurisdictions. Further details of the nature of Positive Energy's operation can be found in the Appendix B: Business Plan.

### **1.8 JURISDICTIONS**

The applicant is seeking authorisation for national representation within the scope of the current AER regulatory framework

### **1.9 TYPE OF CUSTOMERS**

Positive Energy intends to initially focus its efforts in the not-for-profit sector and supply both small and large customers within its target market.



## 2.0 ORGANISATIONAL AND TECHNICAL CAPABILITY

### 2.1 PREVIOUS RETAIL EXPERIENCE

Positive Energy is a business start-up established with the specific purpose of retailing electricity. It has no prior operational experience in the Australian energy retail sector.

Positive Energy is a special purpose vehicle recently established to retail electricity.

- Positive Energy does not hold or has previously held electricity retail licenses in any Australian jurisdiction.
- Positive Energy has not made or been unsuccessful in any license applications in Australia.
- There are no associates of Positive Energy that hold retail licenses in Australia.

### 2.2 OTHER RELEVANT EXPERIENCE

Positive Energy brings to the market a significant mix of related experience. Board members are well regarded business people with extensive background in a number of relevant fields outlined in Appendix C

Details of board members and how their experience will contribute to the success of Positive Energy are provided in appendices to this application.

### 2.3 ACQUISITION OF EXPERIENCE

Positive Energy has engaged the support of highly experienced energy retail consulting and system service providers on a long-term arrangement to assist with our energy retail business establishment, implementation and ongoing operations. This includes training, licensing authorisation, compliance, marketing mix development, customer management system, market interfaces and customer service and operational requirements. Please refer to Section 2.8 below on outsourcing service providers for more information.

In the short to medium term, Positive Energy will implement a recruitment plan to bring in-house additional experience, knowledge and skills to assist with retail operations and expansion into new markets.

### 2.4 ORGANISATIONAL CHART

Appendix D provides details of Positive Energy's organisational chart and the relationship between existing and outsourced activities.



## 2.5 NUMBER OF EMPLOYEES

Positive Energy has, as part of its business plan, chosen to outsource a number of operational requirements in the short-term with the view to ramping up in-house expertise as the business matures. As a result Positive Energy will maintain a core group of three (3) executives plus supporting administration staff as detailed in Appendix E

Positive Energy is committed to encouraging, supporting and delivering training and development for all staff throughout the enterprise to aid the organisation as a whole to meet its objectives thereby assisting the operation to be competitive and highly effective in achieving its goals in the energy market.

Positive Energy will adopt an Equal Employment Opportunity Policy which aims to provide positive initiatives to improve employment opportunities and procedures, as well as conditions for all workers. We are committed to providing a workplace where there is equal employment opportunity, and recognises and respects the diversity of cultures and beliefs.

## 2.6 QUALIFICATIONS, TECHNICAL SKILLS AND EXPERIENCE

Positive Energy will implement an employment plan to acquire the necessary skilled and experienced individuals to assist the board direct and manage in-house operations as well as nominated outsourced functions. During the start-up phase some of this expertise is to be outsourced. Job functions are detailed in Appendix E and our employment policy in Appendix F to this application. Details of Officers expertise and qualifications are set-out in Appendix C

## 2.7 OUTSOURCED FUNCTIONS

As a start-up Positive Energy has concluded outsourcing some key elements of the operational function will have an initial positive cost/benefit. It is planned, as the business grows, we will acquire the additional experience and skills necessary to replace some of the outsourced functions with in-house capability.

Positive Energy has secured the services of Agility CIS to provide a selection of core functions. Agility CIS is a well regarded market participant and has extensive experience in the retail sector.

A full description of the intended outsourced services is set-out in Appendix G (2) to this document

## 2.8 BUSINESS PLAN

Positive Energy's business plan addresses the specific requirements of the AER authorisation as well as a full complement of financial statements. The plan is confidential in nature and comprises Appendix B to the application.



## 2.9 COMPLIANCE STRATEGY

Positive Energy is committed to complying with its prudential and operational obligations as defined by licenses, regulation, legislation, guidelines and policies. In formulating our compliance strategy we made reference to international compliance standards AS/ISO 19600:2015 which stresses compliance as the responsibility of an organisation's governing body. It is an objective of Positive Energy to develop a culture of compliance which will flow through management and operational staff.

Our compliance strategy has been developed in conjunction with industry participants and approved by management. It has also been independently reviewed to ensure all factors that may influence performance have been accounted for.

Positive Energy's outsourced service provision incorporates controls around customer management and complaints handling (and resolution) processes as set-out in Appendix G (2). Future controls over compliance will fall to a dedicated committee that has input from governance resources.

## 2.10 RISK MANAGEMENT STRATEGY

Our risk management strategy has been developed in accordance with AS/NZS ISO 31000:2009, Risk management - Principles and guidelines. The objectives of the strategy are to encourage pro-active management, develop resilience to the influences of risk, enhance customer and other stakeholder confidence and trust and ensure decision making and planning is based upon a platform of certainty.

The strategy covers the operational processes and procedures as well as the contributory out-sourced operations. The strategy has been approved by management and reviewed by an independent third party (opinion attached). Financial risks also form part of the business plan document and are reproduced within the risk management strategy at Appendix I to this application.

Positive Energy will implement public liability; product insurance, professional indemnity and Work cover insurances for operational requirements. Additional evidence of risk management capabilities is embodied in the experience and skill sets of the board and also will be reflected in the key operational staff.

## 2.11 ASSURANCES

Please refer to Appendix K (2) for evidence of an external assurance report for both the compliance strategy and the risk management strategy.

## 2.12 ADDITIONAL INFORMATION

Positive Energy's outsourced service provider has a significant track record in the provision of managed services within the energy retail market. These services have been developed with reference to the mandatory legal framework and applicable standards and which meet market participation requirements. Refer to Appendix G (2) for supporting material.



## 2.13 INDUSTRY MEMBERSHIPS

As part of its mandatory membership requirements for participation in the retail electricity market, Positive Energy has approached and discussed membership requirements with the following industry bodies. In all instances, the member groups have recommended completing membership after retail authorisation has been granted.

- Australian Energy Market Operator (AEMO)
- Austraclear
- Clean Energy Regulator
- Energy and Water Ombudsman (NSW)

## 2.14 MARKET PARTICIPANT AGREEMENTS

Positive Energy has made contact with network providers and other market participants in start-up jurisdictions to advise of our intentions to enter the market and discussed initial market entry requirements and received information including standard agreements and other market participants to advise of our intentions to enter the market and discussed initial market entry requirements.

Please refer Appendix L for evidence of our approaches to market participants.





### **3.0 FINANCIAL RESOURCES**

#### **3.1 AUDITED FINANCIAL STATEMENTS**

Positive Energy is a start-up business with no trading history. Attached are bank statements for Positive Energy (Appendix J (2)).

#### **3.2 CREDIT RATING**

Positive Energy is a start-up business and as such has no credit history

#### **3.3 FINANCIAL FORECASTS**

The appended business plan provides a range of forecasted financial performance measures over a five year period, including but not limited to:

- Cashflow statements
- Profit and Loss
- Balance Sheet
- Ratio and other financial analysis

All statements and forecasts have been independently reviewed by an accredited member firm of the CPA and we include a statement of their opinion in appendices to this application.

The Chief Executive Officer has approved all financial forecasts.

#### **3.4 OWNERSHIP STRUCTURE**

Positive Energy is a privately held concern

#### **3.5 DECLARATIONS**

Positive Energy declares;

- It is a going concern
- Is unaware of any factor that would impede its ability to finance energy retailer activities within the scope of the retailer authorisation for the next 12 months.
- An insolvency official has not been appointed in respect of the business or any property of the business.
- No application or order has been made, resolution passed or steps taken to pass a resolution for the winding up or dissolution of the business.

The Chief Executive Officer has provided a written declaration supporting the above assertions in Appendix M



### 3.6 INDEPENDENT DECLARATION

Appendix N comprises a written declaration from an independent audit in relation to the following specific requirements

- An insolvency official has not been appointed in respect of the business or any property of the business.
- No application or order has been made, resolution passed or steps taken to pass a resolution for the winding up or dissolution of the business.
- They are unaware of any other factor that would impede your ability to finance your energy retail activities under the authorisation.

In addition, attached are ASIC certificates for:

- a) Banned and disqualified persons (Officers & Directors)
- b) Insolvency Notices (which includes searches in relation to:
  - Court Liquidation
  - Creditors Voluntary Liquidation
  - Deed of Company Arrangement
  - Deregistration
  - Members Voluntary Liquidation
  - Scheme of Arrangement
  - Voluntary Administration
  - Winding-up Application
- c) Company Extract
- d) Company Certificate

### 3.7 GUARANTEES

Details of financial guarantees are included within the business plan appended to this application together with a statement of current financial resources.

### 3.8 FORECASTS

All forecast data including revenue and expenses to the point where the business is cash-flow positive is comprised in Appendix J (2) and reproduced in the appended business plan financials.



## 4.0 SUITABILITY

### 4.1 MATERIAL FAILURES

Positive Energy can confirm no company officer has had material failures to comply with regulatory requirements, laws or other obligations over the previous 10 years, including infringement notices or other enforcement action (including voluntary administrative undertakings) being taken by a regulatory body.

### 4.2 REVOKED AUTHORISATIONS

Positive Energy can confirm no company officer has previously had any revoked authorisations or authorities or licences revoked in any other industry.

### 4.3 LEGAL ACTION

Positive Energy can confirm no company officer has any past or present administrative or legal actions in relation to an authorisation, authority or licence in any industry.

### 4.4 RoRL

Positive Energy can confirm no company officer, associate or management personnel have previously triggered the RoLR provisions of the Retail Law or equivalent state/territory/foreign legislation, or have transferred or surrendered an authorisation or licence in circumstances where if not done, triggering a RoLR event would have been likely.

### 4.5 PROSECUTIONS

Positive Energy can confirm that no company officer, director or management personnel have committed or been prosecuted under any territory, state, Commonwealth or foreign legislation (including, but not limited to, the *Australian Securities and Investments Commission Act 2001* (Cwth), *Competition and Consumer Act 2010* (Cwth) 25 and the *Corporations Act 2001* (Cwth)) relevant to our capacity as an energy retailer.

Positive Energy is willing to provide criminal history checks on request.

### 4.6 MANAGEMENT DECLARATIONS

Positive Energy declares:

- No member of our management team has been disqualified from the management of a corporation.
- No member of our management team has been declared bankrupt or being involved in bankrupt proceedings either in Australia or internationally.

The Chief Executive Officer's written declaration is appended in Appendix M



#### 4.7 COMPANY OFFICER DETAILS

All company officers details are attached in Appendix C

#### 4.8 PROBITY AND COMPETENCE

It is the role of the board, on behalf of its owners is to ensure Positive Energy is true to its Mission and achieves its strategic goals and objectives and, in doing so, meets all the legal and moral responsibilities and requirements accompanying 'best practice' corporate governance.

To achieve these outcomes a number of policies and procedures will be implemented to ensure the resources that are allocated to these roles can contribute to these objectives.

Existing board members are well known to the owners of the company and are considered to have the integrity and acumen required to successfully launch the operation and take it to the next phase.