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SPECIAL

Essential Services Commission Act 2001 NOTICE OF SPECIAL REFERENCE UNDER PART 6 Review of Retail Electricity Tariffs

To: The Essential Services Commission
2nd Floor, 35 Spring Street
Melbourne

BACKGROUND

- Under Part 6 of the **Essential Services Commission Act 2001** (ESC Act) the Minister administering the **Electricity Industry Act 2000** (EI Act) may, by written notice, refer any matter relating to the electricity industry to the Essential Services Commission (Commission) for the Commission to conduct an investigation into the matter.
- The Minister desires the Commission to investigate and report to the Minister on the impact on tariffs of certain CPI plus proposals by retailers for the initial determination or subsequent variation of tariffs for the sale of electricity to domestic or small business customers and to deemed customers.

SPECIAL REFERENCE

The Minister refers to the Commission the following matters for the Commission to investigate in accordance with the following terms of reference and subject to the following specifications, requirements and directions:

1. Definitions and interpretation

- (a) In this notice:

average tariff, in respect of tariffs for the sale of electricity to domestic or small business customers and deemed customers as at a date, means the consumption weighted average of those tariffs in respect of those customers as at that date;

CPI plus proposal means any proposal by a retailer in respect of which the percentage increase in the average tariff for the sale of electricity to domestic or small business customers and deemed customers would be greater than the percentage increase in the CPI, where:

- (1) the percentage increase in the average tariff is calculated as follows:

$$\left[\frac{T_2 - T_1}{T_1} \right] * 100$$

where:

- (A) T_2 is what the average tariff in respect of relevant domestic or small business customers and deemed customers would be after the proposal takes effect; and
(B) T_1 is what the average tariff in respect of relevant domestic or small business customers and deemed customers is immediately before the proposal date; and

- (2) the percentage increase in the CPI is calculated as follows:

$$\left[\frac{CPI_2 - CPI_1}{CPI_1} \right] * 100$$

where:

- (A) CPI_2 is the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics for the completed quarter immediately preceding the proposal date; and

- (B) CPI_1 is the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics for the completed quarter immediately preceding the preceding date, except that, if on the proposal date the Australian Bureau of Statistics is yet to publish the Consumer Price Index: All Groups Index for Melbourne for the completed quarter immediately preceding the proposal date, for:
- (C) CPI_2 use the Consumer Price Index: All Groups Index for Melbourne for the completed quarter next immediately preceding the proposal date; and
- (D) CPI_1 use the Consumer Price Index: All Groups Index for Melbourne for the completed quarter next immediately preceding the preceding date;

deemed customer means a person for whom there is deemed to be a contract in force under section 37 of the EI Act;

defined period means such 12 month or longer period as the Commission considers is of sufficient duration so as to allow a proper or adequate assessment of the effect of a CPI plus proposal;

domestic or small business customer has the same meaning as in any Order in Council under section 35 of the EI Act;

October 2001 special reference means the reference written notice of which was given to the Office of the Regulator-General on 12 October 2001 under Part 4A of the **Office of the Regulator-General Act 1994**;

preceding date, in respect of a retailer's proposal, means:

- (1) if the tariffs applying on the proposal date to relevant domestic or small business customers and deemed customers apply by virtue of a determination or a variation by the retailer or another retailer under section 35, 37 or 38 of the EI Act, the date on which those tariffs were published in the Government Gazette; and
- (2) if the tariffs applying on the proposal date to relevant domestic or small business customers and deemed customers apply by virtue of an Order in Council under section 13 of the EI Act, the date which is 2 months before the Order in Council was published in the Government Gazette;

proposal means any proposal by a retailer for either or both of:

- (1) the initial determination of tariffs for the sale of electricity to domestic or small business customers; and
- (2) the subsequent variation of tariffs for the sale of electricity to domestic or small business customers or to deemed customers,

in respect of which the proposal date is:

- (3) on or after the date of this special reference; or
- (4) before the date of this special reference (but in this case excludes any proposal in respect of which the Commission has reported under the October 2001 special reference or any earlier special reference);

proposal date, in respect of a proposal, means the date on which the retailer gives notice of the proposal (by means of publication in the Government Gazette or otherwise); and

retailer means any person which, in relation to the supply of electricity from a supply point and the supply of electricity to a domestic or small business customer, is or used to be the local retailer under any Order in Council under section 35 of

the EI Act, and includes any substitute or assignee of such a local retailer. As at the date of this special reference each of the following is such a retailer:

- (1) AGL Electricity Ltd ACN 064 651 083;
- (2) AGL Victoria Pty Ltd ACN 090 538 337 (formerly Pulse Energy Pty Ltd);
- (3) Origin Energy Electricity Ltd ACN 071 052 287; and
- (4) TXU Electricity Ltd ACN 064 651 118.

(b) In this notice a reference to:

- (1) a singular word includes the plural, and vice versa; and
- (2) legislation (including any subordinate legislation and any Order in Council under any legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation and any Order in Council issued under it.

(c) If a retailer is a local retailer under any Order in Council under section 35 of the EI Act in relation to the supply of electricity from supply points where, in relation to the supply of electricity from those supply points, there is more than one distribution company (as defined in the Order in Council), any proposal by the retailer for the initial determination or subsequent variation of tariffs for the sale of electricity to domestic or small business customers is to be treated as separate proposals in respect of those of the domestic or small business customers which have, in relation to the supply of electricity from their supply points, the same such distribution company (despite what the proposal may otherwise contemplate). Each such separate proposal is to be investigated and reported on separately under this reference.

2. Terms of reference

The following are the terms of reference for the investigation specified under section 48 of the ESC Act:

In respect of any proposal by a retailer the Commission must:

- (a) conduct an investigation into the proposal so as to determine whether the Commission considers the proposal is a CPI plus proposal;
- (b) if the Commission considers the proposal is not a CPI plus proposal, conduct no further investigation into the proposal and report to the Minister that the Commission considers the proposal is not a CPI plus proposal; and
- (c) if the Commission considers the proposal is a CPI plus proposal, conduct a further investigation into the proposal and report to the Minister on the proposal including, without limitation, on:
 - (1) the effect that the proposal has on the average tariff in respect of relevant domestic or small business customers and deemed customers, and in respect of each tariff that applies to any group of those customers, assessed over the defined period;
 - (2) whether those effects are consistent with the achievement of the objectives of the investigation;
 - (3) in light of the proposal, how tariffs should be regulated so as to achieve those objectives taking into account the following principles:
 - (A) that effective competition is to be preferred over regulation;
 - (B) that where regulation (in place of effective competition) is needed to achieve what would otherwise be the outcome or outcomes of effective competition (that is, where there are constraints on, or on the development of, effective competition), the form of

regulation (or the outcomes, or projected outcomes, from applying that form of regulation):

- (i) should not prevent the development of effective competition;
- (ii) should seek to provide outcomes that are consistent with the outcomes that could be expected under effective competition (if effective competition existed); and
- (iii) should be light-handed.

3. Reporting period

The Commission must submit its report on any CPI plus proposal made by a retailer in final form to the Minister no later than 25 days before the day on which the CPI plus proposal is to take effect.

4. Draft report

The Commission must make available a draft report on any CPI plus proposal made by a retailer to both the Minister and the retailer no later than 32 days before the day on which the CPI plus proposal is to take effect, for comment.

5. Matters to be considered

In its investigation into and report on any CPI plus proposal made by a retailer, the Commission is required to consider the following matters:

- (a) the provisions of section 13 of the EI Act, in particular that under section 13 the Governor in Council may, by Order published in the Government Gazette, regulate tariffs for the sale of electricity to domestic or small business customers and to deemed customers;
- (b) the retailer's costs and the retailer's profit margins;
- (c) any benchmark the Commission in its absolute discretion considers relevant to retailers' costs and retailers' profit margins; and
- (d) any other matter the Commission in its absolute discretion considers relevant.

6. Directions

In the conduct of its investigation into any proposal made by a retailer, the Commission is directed as follows:

- (a) the Commission must commence its investigation:
 - (1) if the proposal date in respect of the proposal is on or after the date of this special reference, on the earlier of:
 - (A) the retailer giving notice of the proposal (by means of publication in the Government Gazette or otherwise); and
 - (B) the Commission receiving notice of the proposal from the Minister; and
 - (2) if the proposal date in respect of the proposal is before the date of this special reference and the Commission has not already commenced an investigation into the proposal, on the date of this special reference; and
- (b) the Commission is not required to hold public hearings but may advertise for, receive and consider such written submissions as it considers appropriate. For the avoidance of doubt, this direction does not limit the Commission in the exercise of its powers under section 51 of the ESC Act.

7. Objectives

In performing its functions and exercising its powers in relation to its investigation into any CPI plus proposal made by a retailer, the Commission has the following objectives:

- (a) the primary objective is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services provided by the electricity industry; and
- (b) other objectives are:
 - (1) to facilitate efficiency in the electricity industry and the incentive for efficient long-term investment;
 - (2) to facilitate the financial viability of the electricity industry. In particular, no retailer should be put in a position whereby it is trapped (without being able to have recourse to suitable and cost-effective hedging or contracting measures) between variable wholesale electricity prices and invariable retail tariffs;
 - (3) to ensure that the misuse of monopoly or non-transitory market power is prevented especially in respect of domestic or small business customers and deemed customers;
 - (4) to facilitate effective competition and promote competitive market conduct;
 - (5) to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and
 - (6) to conduct and complete the investigation as expeditiously and efficiently as possible.

8. Withdrawal of October 2001 special reference

To the extent that the Commission may not yet have reported on any matter the subject of the October 2001 special reference, the Minister withdraws that reference.

Dated the 31st day of October 2002

HON CANDY BROAD
Minister for Energy and Resources

Essential Services Commission Act 2001
NOTICE OF SPECIAL REFERENCE UNDER PART 6
Review of Retail Gas Tariffs

To: The Essential Services Commission
 2nd Floor, 35 Spring Street
 Melbourne

BACKGROUND

1. Under Part 6 of the **Essential Services Commission Act 2001** (ESC Act) the Minister administering the **Gas Industry Act 2001** (GI Act) may, by written notice, refer any matter relating to the gas industry to the Essential Services Commission (Commission) for the Commission to conduct an investigation into the matter.
2. The Minister desires the Commission to investigate and report to the Minister on the impact on tariffs of certain CPI plus proposals by retailers for the initial determination or subsequent variation of tariffs for the sale of gas to domestic or small business customers and to deemed customers.

SPECIAL REFERENCE

The Minister refers to the Commission the following matters for the Commission to investigate in accordance with the following terms of reference and subject to the following specifications, requirements and directions:

1. Definitions and interpretation

- (a) In this notice:

average tariff, in respect of tariffs for the sale of gas to domestic or small business customers and deemed customers as at a date, means the consumption weighted average of those tariffs in respect of those customers as at that date;

CPI plus proposal means any proposal by a retailer in respect of which the percentage increase in the average tariff for the sale of gas to domestic or small business customers and deemed customers would be greater than the percentage increase in the CPI, where:

- (1) the percentage increase in the average tariff is calculated as follows:

$$\left[\frac{T_2 - T_1}{T_1} \right] * 100$$

where:

- (A) T_2 is what the average tariff in respect of relevant domestic or small business customers and deemed customers would be after the proposal takes effect; and
 - (B) T_1 is what the average tariff in respect of relevant domestic or small business customers and deemed customers is immediately before the proposal date; and

- (2) the percentage increase in the CPI is calculated as follows:

$$\left[\frac{CPI_2 - CPI_1}{CPI_1} \right] * 100$$

where:

- (A) CPI_2 is the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics for the completed quarter immediately preceding the proposal date; and

- (B) CPI_1 is the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics for the completed quarter immediately preceding the preceding date, except that, if on the proposal date the Australian Bureau of Statistics is yet to publish the Consumer Price Index: All Groups Index for Melbourne for the completed quarter immediately preceding the proposal date, for:
- (C) CPI_2 use the Consumer Price Index: All Groups Index for Melbourne for the completed quarter next immediately preceding the proposal date; and
- (D) CPI_1 use the Consumer Price Index: All Groups Index for Melbourne for the completed quarter next immediately preceding the preceding date;

deemed customer means a person for whom there is deemed to be a contract in force under section 44 of the GI Act;

defined period means such 12 month or longer period as the Commission considers is of sufficient duration so as to allow a proper or adequate assessment of the effect of a CPI plus proposal;

domestic or small business customer has the same meaning as in any Order in Council under section 42 of the GI Act;

preceding date, in respect of a retailer's proposal, means:

- (1) if the tariffs applying on the proposal date to relevant domestic or small business customers and deemed customers apply by virtue of a determination or a variation by the retailer or another retailer under section 42, 44 or 45 of the GI Act, the date on which those tariffs were published in the Government Gazette; and
- (2) if the tariffs applying on the proposal date to relevant domestic or small business customers and deemed customers apply by virtue of an Order in Council under section 21 of the GI Act, the date which is 2 months before the Order in Council was published in the Government Gazette;

proposal means any proposal by a retailer for either or both of:

- (1) the initial determination of tariffs for the sale of gas to domestic or small business customers; and
- (2) the subsequent variation of tariffs for the sale of gas to domestic or small business customers or to deemed customers,

in respect of which the proposal date is:

- (3) on or after the date of this special reference; or
- (4) before the date of this special reference (but in this case excludes any proposal which has taken effect before the date of this special reference or which did not so take effect as a result of or by virtue of an Order in Council under section 21 of the GI Act);

proposal date, in respect of a proposal, means the date on which the retailer gives notice of the proposal (by means of publication in the Government Gazette or otherwise); and

retailer means any person which, in relation to the supply of gas from a supply point and the supply of gas to a domestic or small business customer, is or used to be the local retailer under any Order in Council under section 42 of the GI Act, and includes any substitute or assignee of such a local retailer. As at the date of this special reference each of the following is such a retailer:

- (1) AGL Victoria Pty Ltd ACN 090 538 337 (formerly Pulse Energy Pty Ltd);
 - (2) Origin Energy Retail Ltd ACN 078 868 425;
 - (3) Origin Energy (Vic) Pty Ltd ACN 086 013 283; and
 - (4) TXU Pty Ltd ACN 086 014 968.
- (b) In this notice a reference to:
- (1) a singular word includes the plural, and vice versa; and
 - (2) legislation (including any subordinate legislation and any Order in Council under any legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation and any Order in Council issued under it.

2. Terms of reference

The following are the terms of reference for the investigation specified under section 48 of the ESC Act:

In respect of any proposal by a retailer the Commission must:

- (a) conduct an investigation into the proposal so as to determine whether the Commission considers the proposal is a CPI plus proposal;
- (b) if the Commission considers the proposal is not a CPI plus proposal, conduct no further investigation into the proposal and report to the Minister that the Commission considers the proposal is not a CPI plus proposal; and
- (c) if the Commission considers the proposal is a CPI plus proposal, conduct a further investigation into the proposal and report to the Minister on the proposal including, without limitation, on:
 - (1) the effect that the proposal has on the average tariff in respect of relevant domestic or small business customers and deemed customers, and in respect of each tariff that applies to any group of those customers, assessed over the defined period;
 - (2) whether those effects are consistent with the achievement of the objectives of the investigation;
 - (3) in light of the proposal, how tariffs should be regulated so as to achieve those objectives taking into account the following principles:
 - (A) that effective competition is to be preferred over regulation;
 - (B) that where regulation (in place of effective competition) is needed to achieve what would otherwise be the outcome or outcomes of effective competition (that is, where there are constraints on, or on the development of, effective competition), the form of regulation (or the outcomes, or projected outcomes, from applying that form of regulation):
 - (i) should not prevent the development of effective competition;
 - (ii) should seek to provide outcomes that are consistent with the outcomes that could be expected under effective competition (if effective competition existed); and
 - (iii) should be light-handed.

3. Reporting period

The Commission must submit its report on any CPI plus proposal made by a retailer in final form to the Minister no later than 25 days before the day on which the CPI plus proposal is to take effect.

4. Draft report

The Commission must make available a draft report on any CPI plus proposal made by a retailer to both the Minister and the retailer no later than 32 days before the day on which the CPI plus proposal is to take effect, for comment.

5. Matters to be considered

In its investigation into and report on any CPI plus proposal made by a retailer, the Commission is required to consider the following matters:

- (a) the provisions of section 21 of the GI Act, in particular that under section 21 the Governor in Council may, by Order published in the Government Gazette, regulate tariffs for the sale of gas to domestic or small business customers and to deemed customers;
- (b) the retailer's costs and the retailer's profit margins;
- (c) any benchmark the Commission in its absolute discretion considers relevant to retailers' costs and retailers' profit margins; and
- (d) any other matter the Commission in its absolute discretion considers relevant.

6. Directions

In the conduct of its investigation into any proposal made by a retailer, the Commission is directed as follows:

- (a) the Commission must commence its investigation:
 - (1) if the proposal date in respect of the proposal is on or after the date of this special reference, on the earlier of:
 - (A) the retailer giving notice of the proposal (by means of publication in the Government Gazette or otherwise); and
 - (B) the Commission receiving notice of the proposal from the Minister; and
 - (2) if the proposal date in respect of the proposal is before the date of this special reference, on the date of this special reference; and
- (b) the Commission is not required to hold public hearings but may advertise for, receive and consider such written submissions as it considers appropriate. For the avoidance of doubt, this direction does not limit the Commission in the exercise of its powers under section 51 of the ESC Act.

7. Objectives

In performing its functions and exercising its powers in relation to its investigation into any CPI plus proposal made by a retailer, the Commission has the following objectives:

- (a) the primary objective is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services provided by the gas industry; and
- (b) other objectives are:
 - (1) to facilitate efficiency in the gas industry and the incentive for efficient long-term investment;
 - (2) to facilitate the financial viability of the gas industry;
 - (3) to ensure that the misuse of monopoly or non-transitory market power is prevented especially in respect of domestic or small business customers and deemed customers;
 - (4) to facilitate effective competition and promote competitive market conduct;

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- (5) to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and
- (6) to conduct and complete the investigation as expeditiously and efficiently as possible.

Dated the 31st day of October 2002

HON CANDY BROAD
Minister for Energy and Resources

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