



# Victoria Government Gazette

No. S 112 Tuesday 25 June 2002  
By Authority. Victorian Government Printer

**SPECIAL**

## Gas Industry Act 2001

### COST RECOVERY ORDER IN COUNCIL – AMENDING ORDER

The Governor in Council, under section 68 of the **Gas Industry Act 2001** (“the Act”) and section 27 of the **Interpretation of Legislation Act 1984**, makes the following Order:

#### 1. Purpose

The purpose of this Order is to amend the Cost Recovery Order in Council:

- (a) to allow more time within which the Commission may make certain determinations under the Cost Recovery Order in Council;
- (b) consequent on the enactment of the **Essential Services Commission Act 2001**;
- (c) to clarify when sequential or joint applications may be made pursuant to the Cost Recovery Order in Council;
- (d) to clarify which of the cost recovery principles apply when applications are made under the Cost Recovery Order in Council;
- (e) to clarify the basis on which the Commission may make determinations of and in relation to adjustment factors under clause 14 of the Cost Recovery Order in Council; and
- (f) to make other miscellaneous and procedural amendments.

#### 2. Definitions

In this Order:

“Commission” means the Essential Services Commission established under the **Essential Services Commission Act 2001**; and

“Cost Recovery Order in Council” means the Order made on 14 November 2001 under section 68 of the Act and published in the Victoria Government Gazette on 15 November 2001.

#### 3. Commencement

This Order commences on the day it is published in the Government Gazette.

#### 4. Amendments

The Cost Recovery Order in Council is amended in accordance with the schedule.

#### 5. Transitional

- (1) The amendments made to the Cost Recovery Order in Council pursuant to this Order apply to all applications made by any gas distribution company pursuant to the Cost Recovery Order in Council that:
  - (a) are currently before the Commission; and
  - (b) in respect of which the Commission has not made a final determination as at the date of commencement of this Order.
- (2) Any such application shall be determined by the Commission in accordance with the Cost Recovery Order in Council as amended by this Order.
- (3) In any case where the amendments made by this Order have the effect of extending the time for the making of any determination by the Commission, then that time is hereby extended.
- (4) For the avoidance of doubt, clause 16(4) of the Cost Recovery Order in Council shall not operate so as to deem the Commission to have determined to approve an application if, at the time at which that clause would have so applied, there is an extension of time in force pursuant to the preceding sub-clause.

2      S 112    25 June 2002

*Victoria Government Gazette*

Provided that, nothing in this sub-clause shall prevent clause 16(4) of the Cost Recovery Order in Council operating so that, if at the end of that extension of time, the Commission has not made a determination, the Commission is deemed to have determined to approve an application.

Dated 25 June 2002

Responsible Minister

CANDY BROAD

Minister for Energy and Resources

HELEN DOYE

Clerk of the Executive Council

**SCHEDULE****Amendments to the Cost Recovery Order in Council**

In this Schedule, "Order" means the Cost Recovery Order in Council and all clause references are to clauses of the Cost Recovery Order in Council.

The Order is amended as follows:

1. In clause 1(c):
  - (a) delete "Office of the Regulator-General ("ORG")" and substitute "Commission"; and
  - (b) delete "**Office of the Regulator-General Act 1994**" and substitute "**Essential Services Commission Act 2001**";
2. Throughout the rest of the Order, delete "ORG" wherever it appears and substitute "Commission";
3. In clause 2, insert after the definition of "approved retail gas market rules" the following definition:

""Commission" means the Essential Services Commission established under the **Essential Services Commission Act 2001**,";
4. In clause 4(5):
  - (a) delete "Multiple or sequential" and substitute "Sequential and joint"; and
  - (b) add the following note after the first sentence:

"**Note:** It is recognized that an application may be first brought in respect of the matters specified in clause 4(2)(a) followed by a joint application that is in respect of the matters specified in clauses 4(2)(b) and 4(2)(c).";
5. After clause 4(5), insert the following sub-clauses:

"(5A) No application that a gas distribution company makes pursuant to this Order may be withdrawn without the leave of the Commission.

(5B) A gas distribution company may amend any application that it makes pursuant to this Order.";
6. In clause 4(6):
  - (a) insert after the word "form" in both places that it appears, "timing"; and
  - (b) insert after the word "application", the words "or any amended application";
7. In clause 5, delete "**Office of the Regulator-General Act 1994**" where it twice appears and substitute in each case "**Essential Services Commission Act 2001**";
8. In clause 9, insert the following sub-clauses after sub-clause (6):

"(6A) Notwithstanding sub-clause (6), if a gas distribution company does not provide the audit report:

  - (a) at the time that it makes application for a determination by the Commission relating to recoverable expenditure;
  - (b) at the time of any amendment made to that application where the audit report is provided to support that amendment;
  - (c) within 7 days of the day of commencement of the Cost Recovery Order in Council – Amending Order; or
  - (d) within such additional time (being not less than 7 days) as the Commission may in writing allow;

the Commission:

  - (e) may proceed to make the determinations required or permitted by this Order in the absence of the audit report; and

- (f) in making those determinations, may have regard to the fact that no audit report was provided when determining whether there has been compliance with the cost recovery principles or that those principles have been satisfied.
- (6B) If a gas distribution company provides the audit report after the time that the Commission allowed for the provision of that report, then notwithstanding anything to the contrary in this clause, the Commission is not required to have regard to that report.”;
- 9. In clause 9(9), insert after the word “become” the words, “or is otherwise no longer.”;
- 10. In clause 10(7), insert after the word “become” the words, “or is otherwise no longer.”;
- 11. In clause 12, insert after sub-clause (12) the following sub-clause:  
“(13) The Commission may vary a determination made pursuant to this clause to give effect to a determination made pursuant to clause 9(9) or 10(7).”;
- 12. In clause 14, insert the following sub-clauses after sub-clause (1):  
“(1A) Any adjustment factor so determined may include formulae or other mechanisms that allow for variations of prices, fees and charges on the occurrence of certain events or otherwise in accordance with those formulae or mechanisms.  
(1B) When the Commission determines any adjustment factor pursuant to sub-clause (1), the Commission may also determine:
  - (a) how an adjustment factor may be varied; and/or
  - (b) how prices fees and charges may vary as and when an adjustment factor varies.(1C) The determination made by the Commission pursuant to sub-clause (1B) shall:
  - (a) specify the facts or circumstances that give rise to a variation of an adjustment factor and/or of prices, fees and charges;and may:
  - (b) provide for that variation to occur automatically (whether by operation of a formula or otherwise) or on application made by a gas distribution company;
  - (c) provide that some classes or kinds of variation may occur automatically (whether by operation of a formula or otherwise) and some on application made by a gas distribution company;
  - (d) specify when a gas distribution company shall make applications to vary an adjustment factor and/or prices, fees and charges; and
  - (e) provide for such other matters as the Commission determines are necessary in all the circumstances in order to give effect to any variation of an adjustment factor and/or of prices, fees and charges.(1D) An application for:
  - (a) determination of an adjustment factor; or
  - (b) variation of an adjustment factor and/or for variation of prices, fees and charges consequent on the variation of an adjustment factor;may be made by a gas distribution company notwithstanding anything to the contrary in clause 4(5).”;
- 13. In clause 14(2):
  - (a) delete the words “so determined” and substitute “(including any varied adjustment factor) determined pursuant to this clause”; and
  - (b) delete from paragraph (a) the words “pursuant to this Order or pursuant to any determination made under this Order” and substitute the words “pursuant to the cost recovery principles”;

14. In clause 14(3), insert after the words “actual expenditure” the words “(to the extent that recovery of that actual expenditure is permitted pursuant to the cost recovery principles)”;
15. After clause 14(3), insert the following sub-clause:  
“(3A) For the avoidance of doubt, pursuant to this clause the Commission may determine an adjustment factor notwithstanding that the gas distribution company’s actual expenditure in respect of which that determination is made has not all been first determined to be recoverable expenditure.”;
16. In clause 14(4), insert after the word “determine” the words, “and verify compliance with,”;
17. In clause 15:  
(a) delete at the start of sub-clause (3) the word “When” and substitute the words “Subject to sub-clause (4), when”; and  
(b) add after sub-clause (3) the following sub-clause:  
“(4) When making a determination under clauses 13 and 14, the Commission may also have regard to the principles in sub-clause (2).”;
18. In clause 16, delete sub-clause (3) and substitute the following sub-clause:  
“(3) If the application is in respect of:  
(a) the matters specified in clause 4(2)(b); or  
(b) the matters specified in clause 4(2)(c),  
the Commission shall in each case determine the applications no later than 31 August 2002.”;
19. In clause 16, insert after sub-clause (3) the following sub-clauses:  
“(3A) Notwithstanding sub-clause (3), if an application is made by a gas distribution company for:  
(a) determination of an adjustment factor; or  
(b) variation of an adjustment factor and/or for variation of prices, fees and charges consequent on the variation of an adjustment factor;  
the Commission shall determine that application within 30 days of it being made to the commission.  
Provided that the Commission may, on notice to the gas distribution company concerned, extend time for its determination of that application by a further period not exceeding 30 days.  
(3B) For the avoidance of doubt, nothing in this clause prevents the variation or amendment of a determination made under this Order after the expiry of the time limits set by this clause, where that variation or amendment:  
(a) is permitted or required by this Order and is determined in accordance with this Order;  
(b) is otherwise permitted or required by law; or  
(c) arises from the variation or amendment of any other determination made under this Order and is determined in accordance with this Order.”;
20. In clause 17, add after sub-clause (4) the following sub-clause:  
“(5) A copy of any determination (including any Draft Determination) that the Commission makes pursuant to this Order shall be provided by the Commission to the Minister at the same time as it is provided to the gas distribution company that applied for the determination.”;
21. In the table in Schedule 2, delete the 5th row.
-

This page left blank intentionally

This page left blank intentionally

### Gazette Services

The *Victoria Government Gazette* (VGG) is published by The Craftsman Press Pty. Ltd. for the State of Victoria and is produced in three editions.

**VGG General** is published each Thursday and provides information regarding Acts of Parliament and their effective date of operation; Government notices; requests for tenders; as well as contracts accepted. Private Notices are also published.

**VGG Special** is published any day when required for urgent or special Government notices. VGG Special is made available automatically to subscribers of VGG General.

**VGG Periodical** is published when required and includes specialised information eg. Medical, Dental, Pharmacist's Registers, etc.

### Subscriptions

The *Victoria Government Gazette* is available by three subscription services:

General and Special — \$187.00 each year

General, Special and Periodical — \$249.70 each year

Periodical — \$124.30 each year.

**All prices include GST.**

Subscriptions are payable in advance and accepted for a period of one year. All subscriptions are on a firm basis and refunds will not be given.

All payments should be made payable to

The Craftsman Press Pty. Ltd.

**Subscription enquiries:**

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood Vic 3125

Telephone: (03) 9926 1233

Fax (03) 9926 1292

The *Victoria Government Gazette* is published by The Craftsman Press Pty. Ltd. with the authority of the Government Printer for the State of Victoria

© State of Victoria 2002

ISSN 0819-5471

This publication is copyright. No parts may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Products and services advertised in this publication are not endorsed by The Craftsman Press Pty. Ltd. or the State of Victoria and neither of them accepts any responsibility for the content or the quality of reproduction. The Craftsman Press Pty. Ltd. reserves the right to reject any advertising material it considers unsuitable for government publication.

Address all inquiries to the Government Printer for the State of Victoria

Government Information and Communications Branch

Department of Premier and Cabinet

Level 3, 356 Collins Street

Melbourne 3000

Victoria Australia

#### Subscriptions

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood

Victoria, Australia 3125

Telephone enquiries: (03) 9926 1233

Facsimile (03) 9926 1292

#### Retail Sales

Information Victoria Bookshop

356 Collins Street Melbourne 3000.

Telephone enquiries 1300 366 356

City Graphics

Level 1, 520 Bourke Street

Melbourne 3000

Telephone enquiries (03) 9600 0977

#### Price Code A