



# Victoria Government Gazette

No. S 232 Wednesday 10 December 2003  
By Authority, Victorian Government Printer

## Essential Services Commission Act 2001

### NOTICE OF SPECIAL REFERENCE UNDER PART 6

#### Review of Effectiveness of Retail Competition and Consumer Safety Net for Electricity

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

Pursuant to Part 6 of the **Essential Services Commission Act 2001** (ESC Act) I, THEO THEOPHANOUS, Minister for Energy Industries, refer to the Essential Services Commission (Commission) the following matters for the Commission to investigate in accordance with the following terms of reference and subject to the following directions.

#### Terms of reference

1. For the purposes of section 48 of the ESC Act, the following are the terms of reference for the investigation:
  - 1.1 The Commission must conduct an investigation into, and report to me on:
    - (a) the extent to which retail competition has been effective or is likely to be effective for or in respect of the sale of electricity to consumers or classes of consumers (for example, low income or rural consumers);
    - (b) measures (which may include industry or community actions or legislative or regulatory measures) which could be introduced to enhance the effectiveness of retail competition;
    - (c) the need for the consumer safety net arrangements for supply of electricity to consumers or classes of consumers (for example, low income or rural consumers) after 31 December 2004, either in their current form or in such modified form as may be recommended by the Commission, having regard to the likely impact on consumers or classes of consumers of any such modification.
  - 1.2 Without limiting the scope of the investigations referred to in paragraphs 1.1(a) to (c), the Commission's report must address the following related issues:
    - (a) the nature and focus of retailer marketing including whether, for example, that marketing varies materially between particular classes of consumers;
    - (b) the number and type of consumers exercising retail choice in electricity (including those entering market contracts with their incumbent retailer);
    - (c) the extent to which (if at all) current systems and processes for transferring consumers between retailers act as a material impediment to the exercise of retail choice;
    - (d) if there is a need to retain the consumer safety net arrangements, whether or not the electricity consumption thresholds used to define classes of consumers should be reduced, aligned or otherwise varied, or whether consumers protected by the safety net arrangements could be defined by other means.

**SPECIAL**

**Matters to be considered**

2. In conducting its investigation and preparing the report referred to in paragraph 1:
  - 2.1 I direct the Commission to have regard to the following overarching principles:
    - (a) that effective competition is to be preferred over regulation;
    - (b) that where regulation (in place of 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 hinder 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);
      - (iii) should seek to prevent the misuse of monopoly or non-transitory market power;
      - (iv) should seek to avoid unnecessary duplication, reduce compliance costs and the administrative and regulatory burden on the retailers, to the greatest extent possible;
      - (v) should have regard to other relevant regulatory regimes;
      - (vi) should facilitate the maintenance of a financially viable retail electricity market; and
      - (vii) should, where appropriate having regard to particular issues that may be identified in respect of a class of consumers (such as low income or rural consumers), promote measures that seek to assist those consumers directly in preference to market wide regulation.
  - 2.2 I specify the Commission is to investigate the effectiveness of retail competition particularly over the period commencing 1 October 2002 and ending 31 March 2004, but that the Commission may have regard to any materials or studies prepared, or the status or the prospective status of retail competition, at other times.
  - 2.3 I direct the Commission to have regard to:
    - (a) stakeholder experience with the competitive retail market, and views on how the effectiveness of retail competition may be enhanced; and
    - (b) the objectives of the Commission specified in section 8 of the ESC Act and section 10 of the **Electricity Industry Act 2000** (EI Act).
  - 2.4 I specify that the Commission may have regard to any other factors which the Commission may consider relevant in the circumstances.

**Conduct of investigation**

3. In the conduct of its investigation, I direct the Commission as follows:
  - 3.1 the Commission may from time to time, and shall when requested by me, provide to me or my nominee, interim reports on its investigation and must respond to any additional request by me for advice on any aspect of its investigation;
  - 3.2 the Commission is to hold public hearings and must advertise for, receive and consider written submissions from stakeholders.

**Submission of report**

4. I require the Commission to submit its final report to me by Tuesday 15 June 2004.
5. I require the Commission to make a draft of the report available to me for comment no later than Friday 14 May 2004.

**Definitions**

6. Terms used in this notice have the same meaning as that specified in the EI Act and:  
**consumer** means any person, or a member of a class of persons, to whom an Order under section 35(5) or section 36(3) of the EI Act applies or any person, or a member of a class of persons, deemed to have a contract with a retailer pursuant to section 37 or section 39 of the EI Act; and  
**consumer safety net arrangements** means:
  - (a) the government's reserve power to regulate standard retail prices pursuant to section 13 of the EI Act;
  - (b) the arrangements referred to in section 23 and sections 35 to 39 of the EI Act.

Dated 8 December 2003

THEO THEOPHANOUS MP  
Minister for Energy Industries

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**Essential Services Commission Act 2001**  
NOTICE OF SPECIAL REFERENCE UNDER PART 6  
Review of Effectiveness of Retail Competition  
and Consumer Safety Net for Gas

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

Pursuant to Part 6 of the **Essential Services Commission Act 2001** (ESC Act) I, THEO THEOPHANOUS, Minister for Energy Industries, refer to the Essential Services Commission (Commission) the following matters for the Commission to investigate in accordance with the following terms of reference and subject to the following directions.

**Terms of reference**

1. For the purposes of section 48 of the ESC Act, the following are the terms of reference for the investigation:
  - 1.1 The Commission must conduct an investigation into, and report to me on:
    - (a) the extent to which retail competition has been effective or is likely to be effective for or in respect of, the sale of gas to consumers or classes of consumers (for example, low income or rural consumers);
    - (b) measures (which may include industry or community actions or legislative or regulatory measures) which could be introduced to enhance the effectiveness of retail competition;
    - (c) the need for the consumer safety net arrangements for supply of gas to consumers or classes of consumers (for example, low income or rural consumers) after 31 December 2004, either in their current form or such modified form as may be recommended by the Commission, having regard to the likely impact on consumers or classes of consumers of any such modification.
  - 1.2 Without limiting the scope of the investigations referred to in paragraphs 1.1(a) to (c), the Commission's report must address the following related issues:
    - (a) the nature and focus of retailer marketing including whether, for example, that marketing varies materially between particular classes of consumers;
    - (b) the number and type of consumer exercising retail choice in gas (including those entering market contracts with their incumbent retailer);
    - (c) the extent to which (if at all) current systems and processes for transferring consumers between gas retailers act as a material impediment to the exercise of retail choice;
    - (d) if there is a need to retain the consumer safety net arrangements, whether or not the gas consumption thresholds used to define classes of consumers should be reduced, aligned or otherwise varied, or whether consumers protected by the safety net arrangements should be defined by other means.

**Matters to be considered**

2. In conducting its investigation and preparing the report referred to in paragraph 1:
  - 2.1 I direct the Commission to have regard to the following overarching principles:
    - (a) that effective competition is to be preferred over regulation;
    - (b) that where regulation (in place of 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 hinder 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);
  - (iii) should seek to prevent the misuse of monopoly or non-transitory market power;
  - (iv) should seek to avoid unnecessary duplication, reduce compliance costs and the administrative and regulatory burden on the retailers, to the greatest extent possible;
  - (v) should have regard to other relevant regulatory regimes;
  - (vi) should facilitate the maintenance of a financially viable retail gas market; and
  - (vii) should, where appropriate having regard to particular issues that may be identified in respect of a class of consumers (such as low income or rural consumers), promote measures that seek to assist those consumers directly in preference to market wide regulation.
- 2.2 I specify that the Commission is to investigate the effectiveness of retail competition particularly over the period commencing 1 October 2002 and ending 31 March 2004, but that the Commission may have regard to any materials or studies prepared, or the status or the prospective status of retail competition, at other times.
- 2.3 I direct the Commission to have regard to:
- (a) stakeholder experience with the competitive retail market, and views on how the effectiveness of retail competition may be enhanced; and
  - (b) the objectives of the Commission specified in section 8 of the ESC Act and section 18 of the **Gas Industry Act 2001** (GI Act).
- 2.4 I specify that the Commission may have regard to any other factors which the Commission may consider relevant in the circumstances.

#### **Conduct of investigation**

3. In the conduct of its investigation I direct the Commission as follows:
- 3.1 the Commission may from time to time, and shall when requested by me, provide to me or my nominee, interim reports on its investigation and must respond to any additional request by me for advice on any aspect of its investigation;
  - 3.2 the Commission is to hold public hearings and must advertise for, receive and consider written submissions from stakeholders.

#### **Submission of report**

4. I require the Commission to submit its final report to me by Tuesday 15 June 2004.
5. I require the Commission to make a draft of the report available to me for comment no later than Friday 14 May 2004.

#### **Definitions**

6. Terms used in this notice have the same meaning as that specified in the GI Act and:
- consumer** means a person, or a member of a class of persons, to whom an Order under section 42(5) or section 43(3) of the GI Act applies or any person, or a member of a class of persons, deemed to have a contract with a gas retailer pursuant to section 44 or section 46 of the GI Act; and

**consumer safety net arrangements** means:

- (a) the government's reserve power to regulate standard retail prices pursuant to section 21 of the GI Act; and
- (b) the arrangements referred to in sections 42 to 46 of the GI Act.

Dated 8 December 2003

THEO THEOPHANOUS MP  
Minister for Energy Industries

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