

Contents	1 Commerce Commission, New Zealand	6 Petrol Monitoring	13 New South Wales
	3 National developments	7 NCC	14 ACT
	3 Telecommunications	7 Gas code	15 Tasmania
	4 Electricity	8 State developments	17 Queensland
	5 Gas	8 Victoria	19 Northern Territory
	6 Transport Prices Oversight	9 Western Australia	20 Contacts
		11 South Australia	



network

network national developments telecommunications gas electricity airports rail transport prices ncc state developments victoria western australia south australia act new south wales tasmania queensland northern territory contacts

Commerce Commission, New Zealand

Until 2001 New Zealand relied on generic competition law embodied in the Commerce Act 1986 to regulate utility network operators. In 2001 the NZ govt introduced Part 4A to the Act which required the Commerce Commission (CC) to regulate the activities of electricity lines businesses. It also introduced the Telecommunications Act 2001 which established the position of Telecommunications Commissioner within the CC.

Although this altered the CC's involvement in those two industries, their behaviour still remains subject to the generic competition law.

This article is an overview of the CC's responsibilities, and updates current activities in the two industries.

The CC was established under the Commerce Act and its main purpose is to promote market efficiency by fostering:

- healthy competition among businesses
- informed choices by consumers
- sound economic regulation.

The purpose of the principal Act, the Commerce Act, is to promote competition in markets for the long-term benefit of consumers within NZ.

The CC is an independent crown entity that is not subject to direction from ministers or the executive.

When required by the CC, companies and individuals must provide information and appear before it to give evidence. Under some circumstances the CC has the power to obtain search warrants from the District Court, and to make orders declaring information to be confidential.

General market regulation

The Commerce Act prohibits anti-competitive market behaviour and structure. It also provides for the regulatory control of goods or services in specified markets.

The CC carries out enforcement and regulatory control activities under the Act. Its regulatory activities primarily involve adjudication decisions to authorise prohibited behaviour on the basis of net economic benefits, and formal clearances to proposed mergers.

It provides general information to businesses and consumers about their rights and obligations, and publicises the results of enforcement activities and adjudication decisions to encourage other businesses to comply.

Regulatory control

Electricity. The CC considers applications for exemption from certain requirements of the Electricity Industry Reform Act 1998.

In 2001–02 the CC granted authorisation to (1) the Electricity Governance Board (EGB) for proposed arrangements between industry parties, (2) participants in the NZ Electricity Market (NZEM) for the market administrator to make available to participants all final bids to purchase, and offers to sell, electricity through the NZEM for the trading periods of the trading day exactly two weeks earlier.

Goods and services. Under the Commerce Act control may be introduced over goods and services to promote competition in NZ markets. The CC can initiate studies into whether control should be imposed, or carry them out following a ministerial request.



One such inquiry, requested by the Minister of Commerce and completed on 1 August 2002, considered whether airport activities should be controlled at Auckland, Wellington and Christchurch international airports. The CC recommended control at Auckland, but not Wellington or Christchurch. It was the CC's first regulatory control study under the Commerce Act.

Gas. In April the Minister of Energy requested a report on whether gas pipeline services (transmission and distribution) should be controlled. The CC must report by 1 November 2004.

Telecommunications

The CC has three major functions under the Telecommunications Act. It:

- resolves access disputes between carriers
- oversees the telecommunications service obligations (TSO) regime and apportions the annual costs between carriers
- monitors the regulatory regime, and recommends to the minister changes (additions, modifications or amendment) to the list of regulated services.

The telecommunications industry is also subject to general market regulation under the Commerce and Fair Trading acts. The CC can use the full range of enforcement powers under those acts.

Issues

The CC has received five applications for resolution of access disputes. Multiple applications in relation to one dispute are dealt with in a single process. Conversely, distinct issues in a single application, such as interconnection and wholesale, may be dealt with separately.

1. Interconnection/resale—Telecom and TelstraClear—Interconnection decision released in November 2002. Resale decision released in May 2003.
2. Residential resale—TelstraClear—draft determination released in June 2003.
3. CallPlus access determination—Telecom—draft determination released in June 2003.
4. Multi-network determinations: number portability—TelstraClear, CallPlus, Compass Communications, ihug, WorldxChange Communications.

5. Pricing reviews—Telecom, TelstraClear—conference held in July to consider TSLRIC pricing methodology.

Telecommunication service obligation

The CC is required annually to identify and determine the allocation of specified telecommunications service obligation (TSO) costs relating to local residential telephone service between liable telecommunications companies. The CC must take into account any revenue and other benefits received by Telecom. Liable parties must provide certain information to enable the CC to make a determination.

Work is underway on a determination covering 20 December 2001 to 30 June 2002 (the end of Telecom's financial year).

Local loop and public data network unbundling

Section 64 of the Telecommunications Act 2001 requires the CC to investigate whether the following services should be regulated:

- access to the unbundled elements of Telecom's local loop network
- access to the unbundled elements of, and interconnection with, Telecom's fixed public data network.

Investigations began on 10 April 2003 with the publication of an issues paper. A draft report will follow. Recommendations in a final report will go to the Minister of Communications.

Industry forum

The CC may approve telecommunications industry codes submitted by the telecommunications industry forum—if they are consistent with the purpose of the legislation, comply with the Commerce Act, and do not relate directly to specified access pricing principles. The CC can consult with industry before approving a code.

A number of carriers have been registered by the CC to be eligible to vote in relation to draft codes but no codes have yet been submitted.

Electricity sector regulation

The CC is responsible for electricity lines regulation (transmission and distribution) under Part 4A of the Commerce Act.

The electricity industry is subject to general market regulation under the Commerce and Fair Trading acts. The CC enforces the Electricity Industry Reform Act as part of its general market regulation activities. It can use the full range of enforcement powers under those acts.

Electricity Industry Reform Act

This legislation separates generation and retail businesses from transmission and distribution (or lines) businesses. Companies cannot be involved in both. The CC can grant exemptions if it is satisfied there will be no adverse effects on competition. It receives around two applications each year.

Electricity lines businesses

Part 4A gives the CC responsibilities to regulate electricity lines businesses (transmission and distribution). They include:

- auditing (completed) ODV asset valuations of 29 electricity lines businesses plus Transpower
- developing thresholds for the declaration of control of line services
- assessing businesses against the thresholds
- investigating businesses that breach the thresholds and determining whether to declare regulatory control
- controlling, if necessary, the line services of any businesses in breach of thresholds
- authorising Transpower's pricing methodology, if required, by Order in Council made on the recommendation of the Minister of Energy
- developing and administering an information disclosure regime, under which lines businesses must publicly disclose financial and other performance information
- undertaking a review of asset valuation methodologies for lines business system fixed assets.

The purpose of the thresholds and control regime is to promote the efficient operation of markets directly related to electricity distribution and transmission services through targeted control for the long-term benefit of consumers.



Issues

Thresholds and control regime

As noted above the CC is required, inter alia, to set thresholds and assess the performance of electricity lines businesses against those thresholds. If thresholds are breached the CC could further investigate the business and control their prices, revenue or quality.

On 6 June 2003 the CC set two thresholds: price path, and quality.

Price path threshold—as at 6 September 2003 all electricity lines businesses will first be assessed against this threshold and, except for Transpower (the only transmission business in New Zealand), again as at 31 March 2004 (30 June 2004 for Transpower).

The general intent of the price path threshold assessment is to ensure prices (as measured by a

weighted average) are no higher in nominal terms as at 31 March 2004 (30 June 2004 for Transpower) than they were when the relevant legislation, Part 4A of the Commerce Act, was enacted (8 August 2001).

The threshold will be reset (possibly for five years) from 1 April 2004 (1 July 2004 for Transpower) to give incentive to ongoing real price reductions at a rate the CC is yet to determine. The CC is focusing on two broad options for resetting the price path threshold: a comparative (or benchmarking) option, and a partial building blocks option.

The CC's preliminary view is that, for distribution businesses, it prefers the likely incentive advantages offered by the comparative option, assuming that concerns regarding the methodological robustness of benchmarking techniques can be satisfactorily resolved. The partial building blocks option is considered a fall-back option which, like the comparative option,

also has the potential to meet the statutory objectives of Part 4A of the Commerce Act.

In addition to resetting the price path threshold, the CC is working on the detail of the investigation and control phases.

Information disclosure by electricity lines businesses

The CC has set information disclosure requirements to assist it assess lines businesses against the thresholds. Further disclosure requirements may flow from the development of the regulatory regime. In the meantime, lines businesses will continue to disclose information in accordance with the Electricity (Information Disclosure) Regulations 1999, administered by the Ministry of Economic Development.



national developments

Telecommunications

Internet interconnection declaration inquiry

The ACCC is inquiring into whether an internet interconnection service should be declared under Part XIC of the *Trade Practices Act 1974*.

The inquiry follows a long history of complaint to the ACCC that arrangements in Australia are anti-competitive in nature. It also follows requests that the ACCC consider whether they should be regulated under Part XIC. A draft decision is expected later this year.

Mobile services review 2003

The ACCC is also inquiring into the regulation of mobile telephony services.

This follows a commitment made in July 2001—when the ACCC released its final report on the pricing methodology for the GSM mobile termination services—that it would review the pricing methodology in two years. The ACCC determined that a complete review of regulation in mobile service markets should be undertaken.

It expects to release a draft report in September 2003 and a final report in late 2003.

Enhanced accounting separation regime for Telstra

In December 2002 the parliament passed the *Telecommunications Competition Act 2002*, providing for an enhanced accounting separation of Telstra's wholesale and retail operations. The Minister for Communications, Information Technology and the Arts then directed the ACCC to issue record keeping rules under its TPA powers requiring Telstra to provide information for release to the public.

The direction also requires the ACCC to publish a six-monthly report on competition in the corporate customer segment of the market.

Public disclosure of market indicator data

Under the telecommunications industry regulatory accounting framework (RAF) the ACCC collects financial and service usage data from Australia's major telecommunication carriers.

The ACCC will publish extracts in a market indicator report to be released bi-annually, in accordance with the approach detailed in its disclosure report for record keeping rule information issued in January 2003. The report will include revenues, usage and market share information in relation to retail and wholesale telecommunications services.

Disclosure notices regarding the publication of this information were sent to carriers in early July. The first report is expected shortly.



Expiry dates for declared services

The Telecommunications Competition Bill 2002 requires that all declared services have five year expiry dates. The transitional provisions associated with this amendment to the TPA—which came into force in December 2002—require the ACCC to specify an expiry date for each existing declaration. The date must be within five years of the commencement of the amendments. Ahead of the expiry date the ACCC must conduct a public inquiry into whether the particular declaration should be retained or expire, after which the ACCC can extend the declaration for up to five years beyond the expiry date.

In February 2003 the ACCC released a discussion paper identifying services currently declared under both the transitional provisions accompanying the introduction of Part XIC of the TPA in 1997 and subsequent declaration inquiries.

In June the ACCC released its final decision and expiry dates timetable.

Revisions to ACCC dispute resolution processes

On 4 June 2003 the ACCC issued a revised guide on the resolution of telecommunications access disputes, seeking industry comment by 28 July 2003.

It followed the December 2002 *Telecommunications Competition Act 2002* changes to the TPA which required four important revisions.

- Greater guidance on when the ACCC will backdate its arbitration decisions to negotiation start times, to encourage prompt resolution of disputes.
- Greater guidance on when the ACCC will defer arbitration while considering an access undertaking.
- The ACCC is to make determinations setting out model terms and conditions for key wholesale services that can be applied in access disputes.

- The removal of merits review of ACCC arbitration determinations.

The revised guide is available from the ACCC website at <www.accc.gov.au>.

Emerging structures

In March 2002 the Minister for Communications, Information Technology and the Arts requested the ACCC to report on emerging market structures in the communications sector. It followed the announcement of the pay TV content supply arrangements between Foxtel and Optus and between Foxtel and Telstra.

The ACCC's June 2003 report made recommendations where it believes, from a competition perspective, there is a strong case for reform or further review. It focused on parts of the sector particularly affected by the agreements: telecommunications, pay TV and free-to-air (FTA) broadcasting.

The recommendations are generally consistent with, and complement, the undertakings accepted by the ACCC when considering the pay TV content supply arrangements.

The report is available from the ACCC's website at <www.accc.gov.au>.

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Electricity

National electricity code

Amendments to Victorian transmission regulatory arrangements

On 15 October 2002 the ACCC received applications for authorisation for amendments to Victorian derogations contained in chapter 9 of the national electricity code. The applications related to the regulation of transmission network services in Victoria from 1 January 2003.

On 18 December 2002 the ACCC granted interim authorisation. A draft determination followed on 5 February 2003. The final, on 19 March 2003, granted conditional authorisation.

The condition was to remove a provision requiring the ACCC to make its revenue cap decision for VENCORP at least 40 days before the commencement date of the regulatory period, otherwise the application was taken to be approved. The provision raised practical issues and was inconsistent with the procedure adopted for other TNSPs.

Overall the ACCC considered the amendments would ensure greater clarity in the allocation of roles and responsibilities between VENCORP and SPI PowerNet, and provide explicit accommodation in Victoria's derogations for VENCORP's not-for-profit status.

Reserve trader sunset

On 9 April 2003 the ACCC released a draft determination on amendments to the national electricity code submitted by NECA—saying the benefits extending the reserve trader provisions outweighed any anti-competitive detriments.

NECA lodged a variation seeking to correct an oversight and extend the operations of the safety net provisions and reserve contracting derogation consistently with that of the reserve trader provisions.

The ACCC granted interim authorisation and later released a revised draft determination concluding that the benefits outweighed any anti-competitive detriments. As such, the existence of a reserve trader/reliability safety net may avoid involuntary load shedding, use of directions and the imposition of mandatory restrictions, which would have a more distortionary effect on the market.

Despite the NEM operating at high levels of reliability, the ACCC feels it prudent to extend the arrangements for a further two years, allowing the market time to gain further information regarding the full impact of the provisions. However, the draft determination contained a condition of authorisation requiring NECA to commence a review into the arrangements before 1 July 2004.

The ACCC anticipates issuing a final determination in September.

Regional pricing of ancillary services

On 27 March 2003 NECA applied for authorisation of amendments to the national electricity code concerning the modification of arrangements for

Declared services	Expiry date
Domestic PSTN originating and terminating access Local PSTN originating and terminating access	December 2006
Domestic GSM and CDMA originating and terminating access	June 2004
Digital data access ISDN originating and terminating access	June 2005
Transmission capacity	March 2004
Conditioned local loop Unconditioned local loop Local carriage	July 2006
Line sharing	October 2007
Analogue subscription television broadcasting carriage	July 2007



recovery of costs of some ancillary services in the national electricity market (NEM).

The amendments are based on recommendations by Eraring Energy, Hazelwood Power and the National Electricity Market Management Company (NEMMCO) following the joint NECA/NEMMCO forum on ancillary services in March 2002.

The proposed arrangements deal with circumstances when part of the market becomes isolated and ancillary services need to be sourced locally. They also deal with regional pricing issues.

The ACCC received submissions from Delta Electricity, Eraring Energy, Ergon Energy, Hydro Tasmania, NEMMCO, National Generators' Forum, Origin Energy, Powerlink and TXU.

The ACCC expects to release a draft determination later in the year.

Ombudsman access to metering data

On 27 March 2003 the ACCC received applications for authorisation for amendments to provisions contained in chapters 7 and 8 of the national electricity code. The applications relate to an industry ombudsman's access to relevant market settlement and transfer solutions information (MSATS) to help investigations of specific complaints made against a code participant.

The applications were submitted by NECA on behalf of the Victorian Energy and Water Ombudsman and the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON).

On 2 July 2003 the ACCC released a draft determination authorising the changes and setting out its consideration that the changes facilitate the efficient resolution of complaints and disputes, such as the transfer of customers under full retail competition.

Murraylink Transmission Company

On 14 May 2003 the ACCC released its preliminary view approving the conversion of the Murraylink interconnector from an unregulated interconnector to a regulated interconnector. By converting it will earn regulated revenue determined by the ACCC.

MTC is currently registered with NEMMCO as a market network service provider (MNSP). MNSPs operate as unregulated interconnectors that rely on the spot price differential between two interconnected regions to earn revenue.

The ACCC used its regulatory test, which is a cost-benefit analysis, to determine the benefits of conversion for electricity consumers as well as to determine the efficient cost for the project.

A position paper should be released in August 2003.

Incentive regulation and implementation workshop

On behalf of the Utility Regulators Forum the ACCC hosted a workshop in Melbourne on 9 May 2003 to present the findings of the Farrier–Swier report into building blocks and alternative forms of incentive regulation with particular focus on the setting of X in the current CPI-X regulatory regime.

The morning session dealt with the theory of incentive regulation and the afternoon session with the practical implementation issues involved with the use of external benchmarking methods such as total factor productivity (TFP).

The workshop also sought to engage industry into a wider debate concerning incentive regulation with presentations from experts and stakeholders. The presentations can be found at <<http://www.accc.gov.au/utipubreg/pubreg.htm>>.

Statement of principles for the regulation of transmission revenues

Draft service standards guidelines

Part B, chapter 6 of the national electricity code requires the ACCC to set revenue caps for transmission network service providers (TNSPs). As a part of each decision the ACCC must be satisfied with the level of service that TNSPs will provide in return for their revenue cap. Therefore the ACCC is developing service standards guidelines to outline how service levels will be considered in revenue cap decisions.

The ACCC published draft guidelines on 28 May 2003. The final guidelines will inform TNSPs what service standards information to provide to the ACCC in their revenue cap applications and in their annual compliance statements.

Tasmanian transmission network (Transend Networks) revenue cap

The ACCC will regulate Transend Networks' transmission network from 1 January 2004.

On 14 March 2003 Transend lodged an application with the ACCC outlining its proposed revenue cap.

The ACCC review will determine the appropriate revenue cap for non-contestable transmission network services provided by Transend for 5½ years from 1 January 2004 to 30 June 2009.

The ACCC engaged GHD Ltd to review key aspects of the application and has now called for submissions on the GHD report.

Submissions will be sought when the draft decision is published on the ACCC's website. Transend's application and the GHD report are on the ACCC website.

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Gas

City Gate to Berrimah pipeline

The City Gate to Berrimah Pipeline (CGBP) was deemed a covered pipeline under the gas code at the time of enactment. As the regulator the ACCC has approved successive requests by the owner, NT Gas Distribution Pty Ltd, to defer the submission date for the access arrangement for limited periods given the significance of the pipeline.

In January 2003 NT Gas Distribution Pty Ltd advised the ACCC that it would be lodging an application for the revocation of coverage of the pipeline with the NCC. The ACCC agreed to a final extension until 12 June 2003 to allow the NCC and relevant minister time to consider the application.

On 15 May 2003 the NT Minister for Business, Industry and Resources Development, The Hon Paul Henderson MLA, released his decision to revoke coverage. His decision supported the NCC recommendations that the CGBP failed to meet criteria 1.9(a) of the code—that regulated access to the pipeline would promote competition in a downstream market for natural gas sales, and criteria 1.9(d) that continued coverage would be in the public interest.

The CGBP is no longer a covered pipeline and is not required under the gas code to submit an access arrangement or ring fencing reports to the ACCC.

Ring fencing reporting requirements

Section 4 of the gas code sets out both the minimum ring fencing obligations with which a service provider must comply and the regulator's responsibilities to monitor and enforce compliance.



In 2002 the ACCC introduced a pro-forma compliance report which contained a 'Statement of compliance' requiring a service provider's board of directors to approve the content and its CEO and a non-executive director to sign-off on the reports.

The ACCC viewed the non-executive director sign-off as increasing the level of independent oversight. However, half the service providers do not have a non-executive director.

The ACCC is now developing draft accounting guidelines to establish the appropriate level of independent oversight. They will be circulated for public comment later in the year and introduced ahead of the 2003–04 reporting period.

The non-executive director sign-off requirement will be removed for the 2002–03 reporting period. Service providers have been advised and were due to submit 2002–03 reports by 31 July 2003.

Central West Pipeline: approval of tariffs for 2003–04

The Central West Pipeline access arrangement approved by the ACCC in October 2000 set the tariffs for the periods 2000–01 and 2001–02. Thereafter the tariffs were set to increase based on a CPI-X formula until 2009–10, the expected end of the initial access arrangement period. The reference tariff for 1 July 2002 to 30 June 2003 was \$2.43/GJ.

The service provider (Australian Pipeline Trust (NSW)) advised the ACCC of its proposed reference tariff of \$2.51/GJ for 1 July 2003 to 30 June 2004. The escalation was in accordance with the CPI-X formula and the ACCC approved it exclusive of GST on 18 June 2003. The new tariff is effective from 1 July 2003 to 18 June 2004.

Tribunal reviews GasNet decision

On 17 January 2003 the ACCC published its decisions to not approve GasNet's amended revisions to its access arrangement for the Victorian transmission system and to draft and approve its own revised access arrangement for GasNet.

On 31 January 2003 GasNet applied to the Australian Competition Tribunal for review, disputing five aspects of the ACCC's decision:

- the use of five year (rather than 10 year) bond rates for calculating the risk free rate used to determine the benchmark rate of return
- the use of an equity beta value of 0.97 (rather than 1.16)

- an allowance of 12.5 basis points (rather than 25 basis points) above the debt margin for debt raising costs
- an annual allowance of \$22 000 (rather than \$509 000) for asymmetric risks
- an inflation forecast of 2.16 per cent for each year of the second access arrangement period (rather than 2.52 per cent for 2003 and 2.07 per cent for each of the subsequent years).

The hearing begins in Melbourne on 13 August 2003.

Tribunal reviews MAPS decision

On 31 July 2002 the ACCC published its decisions to not approve Epic's proposed access arrangement for the Moomba to Adelaide Pipeline System (MAPS) and to draft and approve its own access arrangement.

Epic has applied to the Australian Competition Tribunal for a review of the ACCC's decision.

Epic has identified the following aspects of the ACCC's decision as disputed matters.

- The initial capital base set by the ACCC of \$360m (rather than \$423m).
- The rate of return set at 12.55 per cent by the ACCC compared to 13.3 per cent sought by Epic in its submissions to the tribunal. The difference is a result of different betas used in the capital asset pricing model (CAPM).
- The expansions policy required by the ACCC that states expansions will be covered unless the regulator consents otherwise and the inclusion of the Pelican Point Power expansion as part of the covered pipeline. Resolution of this issue will determine whether the covered pipeline has a capacity of 393 or 418 TJ/day.

The hearing begins in Adelaide on 1 September 2003.

VENCorp budget

On 1 May 2003 VENCorp submitted its annual statement and market fees for financial year 2003–04 to the ACCC for assessment.

VENCorp's statement must forecast total costs and market fees for the next financial year. The ACCC has 20 working days to approve or reject the statement, after which the ACCC is deemed to approve it.

On 28 May 2003 the ACCC approved the statement, subject to correction of a minor typing error.

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Transport and prices oversight

Airservices Australia price notification

Airservices Australia is a statutory monopoly with a range of functions including providing safe and environmentally sound air traffic management and related services.

In June 2003 the ACCC announced its final decision to object to a pricing proposal from Airservices lodged under the *Prices Surveillance Act 1983*.

In an earlier decision the ACCC had allowed a temporary price increase, but recommended that future pricing proposals should adopt a longer term view of price setting and allow for a thorough review of its cost structure.

In April 2003 Airservices submitted a pricing proposal for the 2003–04 financial year, for a general 6.95 per cent increase to uncapped terminal navigation and aviation rescue and fire fighting ports.

Its reasons were the downturn in aviation activity and that a long-term approach to pricing was currently impractical and undesirable. All submissions opposed the increases.

The ACCC objected because of concerns about the short-term approach Airservices was taking to pricing, as well as related issues such as efficiency and asset valuation.

If the ACCC had allowed the proposal it felt there would be little incentive for Airservices to resolve the issues, in particular working with customers to agree on a longer-term pricing model.

Petrol monitoring

Petrol pricing report

In response to the ACCC's *Reducing fuel price variability* report released 14 May 2002 the federal government requested the ACCC to continue monitoring and report by the end of 2002 on the outcomes of:

- the fuel pricing arrangements in WA
- the terminal gate pricing (TGP) arrangements of Victoria and WA
- the impact of the TGP measures announced by Shell and Caltex on regional petrol prices.



The report *Terminal gate pricing arrangements in Australia and other fuel pricing arrangements in Western Australia* was released on 23 April 2003 and is available on the ACCC website <www.accc.gov.au>.

Since January 2001 WA has introduced a number of fuel pricing arrangements including the 24-hour rule (under which fuel retailers have to fix their prices for 24 hours), maximum wholesale price (MWP) arrangements (these are the WA TGP arrangements) and 50/50 legislation (which allows a retailer to buy up to 50 per cent of fuel from sources other than their primary supplier).

WA had also introduced specific fuel standards: the first stage taking effect from 1 January 2000; the second stage with higher standards from 1 January 2001.

The ACCC report noted that Perth average retail unleaded petrol prices had increased by 2.5 to 3.0 cents per litre against various benchmarks. It also noted that the MWP arrangements had not worked, as only one sale had been made under them. The WA government introduced revised TGP arrangements in December 2002.

The report commented that it was hard to conclude that the arrangements were successful, and expressed concern at the impact on the petroleum industry in WA of the combination of the extensive fuel price regulations and the tighter WA fuel standards.

With respect to the Victorian TGP arrangements, introduced in August 2001, the ACCC found it difficult to form a view on their impact because the extent to which they apply to the petroleum market in Victoria was not clear.

The arrangements apply to both spot and contract sales and it was not possible to determine how many contracts fell under the arrangements.

However, the report noted that since the introduction of the TGP arrangements, average retail unleaded petrol prices in both Melbourne and country Victoria had increased (by 1.0 and 0.5 cpl respectively) against a benchmark indicator.

The TGP arrangements introduced in 2002 by Shell, Caltex and BP in the other states were also examined. The ACCC was unable to form a view on the outcomes because they had been in place for a short time only and it was unlikely they covered a significant proportion of the petroleum market.

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National Competition Council (NCC)

Matters under Part IIIA of the TPA

Virgin at Sydney domestic airport

On 1 October 2002 the NCC received an application under Part IIIA of the Trade Practices Act from Virgin Blue Airlines Pty Ltd for a recommendation to declare a service for the use of runways, taxiways, parking aprons and other associated facilities necessary to allow aircraft domestic passengers to:

- take off and land using the runways at Sydney airport
- move between the runways and the passenger terminals at Sydney airport.

The NCC's draft recommendation to declare the above service was published in July. Public submissions will be received on the draft until August 2003 after which a recommendation will be sent to the minister.

Wirrida to Tarcoola rail track

In September 2001 Aulron Energy Limited applied for declaration of the service provided by the Wirrida to Tarcoola rail track. The NCC forwarded its final recommendation that the service be declared to the minister in July 2002. The minister declared the service in September 2002.

The infrastructure owner, APT, sought an Australian Competition Tribunal review of the minister's decision. Aulron chose not to give evidence. In March 2003 the tribunal set aside the minister's decision on the procedural basis that there was no probative material before it that satisfied s. 44H(4).

Gas code

Goldfields Gas Pipeline (WA)

In March 2003 the NCC received an application from Goldfields Gas Transmission Pty Ltd (GGT) to revoke coverage under the *Gas Pipelines Access (Western Australia) Act 1998*, of the Goldfield Gas Pipeline (GGP), including the Newman Lateral. The pipeline is owned by an unincorporated joint venture comprising Southern Cross Pipelines Australia Pty Limited, Southern Cross Pipelines (NPL) Australia Pty Ltd, and Duke Energy WA Power Pty Ltd. The pipeline is operated by GGT for and on behalf of the owners.

The 1380 km pipeline transports natural gas from the Dampier to Bunbury Natural Gas Pipeline Compressor Station One at Yarraloola to Kalgoorlie, via the East Pilbara and North East Goldfields regions of WA.

A proposed access arrangement for the GGP was formally submitted to the Office of the Gas Regulator (OffGAR) on 15 December 1999. OffGAR issued a draft decision requiring 49 amendments on 10 April 2001. On 6 November 2002 OffGAR issued a notice indicating its intention to revise the approval process and to amend the draft decision issued with respect to the GGP.

If revocation of the pipeline were granted GGT would be released from their obligations under the code and third parties would not be able to use the code to seek access to the GGP.

The NCC extended the date for the release of its draft recommendation to 31 July 2003.

Moomba to Sydney pipeline

In June 2001 the NCC received applications to revoke coverage of two pipelines within the Moomba to Sydney pipeline system (MSP) from the national gas code. The application pipelines were the MSP Mainline (the main pipeline from Moomba to Sydney) and the Canberra Lateral. The applications were made by East Australian Pipeline Limited, owner of the pipelines.

In November 2002 the NCC recommended to the minister that coverage not be revoked because the pipelines have substantial market power.

The minister sought information from the NCC on further submissions he had received. The NCC forwarded its response to the minister in May 2003.

South West Slopes and Temora natural gas distribution network systems

On 4 July 2003 the NCC received applications to revoke coverage of the South West Slopes (SWS) natural gas distribution network and the Temora natural gas distribution network from the *Gas Pipelines Access (New South Wales) Act 1998* (the NSW Gas Access Act). The applicant is the owner and operator of the pipelines, Country Energy Gas Pty Ltd ACN 083 199 839.

Schedule A of the national gas code lists transmission and distribution pipelines covered by the requirements of the code from the commencement of the code's operation.



Both networks are not listed. They became covered under the code through s. 1.40 which provides:

An extension to, or expansion of the Capacity of, a Covered Pipeline shall be treated as part of the Covered Pipeline for all purposes under the Code if the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline provides for that extension or expansion to be treated as part of the Covered Pipeline.

The pipelines were constructed as extensions to the AGL Gas Network. Section 7 of the AGL Gas

Network access arrangement contains the extensions/expansion policy:

All extensions and expansions carried out by AGLGN normally will be treated by AGLGN as part of the existing Covered Pipeline and will automatically be included within it. An extension includes any pipes laid in NSW in a distribution system owned and operated by AGLGN at any time during the Access Arrangement.

IPART approved the AGL access arrangement in September 2000. The SWS network and the

Temora network were built and completed by AGL in 1999 and 2000 respectively. They were then purchased by Great Southern Energy from AGL in February 2001. Great Southern Energy subsequently merged with Advance Energy and NorthPower to form Country Energy in July 2001.

A draft recommendation will be released before the NCC forwards its final recommendation to the relevant decision-maker.



state developments

state developments victoria western australia south australia act ne south wales tasmania queensland northern territory contacts ncc gas electricity airports rail transport prices ncc state develo

Victoria

Essential Services Commission (ESC)

Energy

Retailer of last resort

Electricity—The ESC has finalised its consultation on the pricing principles for retailer of last resort service (ROLR) for electricity. The ESC is now considering the market participant that can best provide the service in the case of local retailer failure and the form of the price when customers are supplied by the ROLR. The ESC is also finalising the operating procedures.

Gas—Consultation began early in 2002 on an ROLR solution in the event of a non-host retailer failure. After considering stakeholder submissions the ESC decided a comprehensive review should be undertaken incorporating a solution for both non-host and host retailer failure. This necessitates a detailed review of the operations of the wholesale gas market to ensure appropriate pricing is developed.

Since the last newsletter the ESC has investigated further the complex nature of the gas wholesale market arrangements. It anticipates releasing an issues paper in July for consultation.

The ESC's approach to ROLR is to bring the gas and electricity policies into alignment where possible.

Ring fencing

Following the introduction of FRC for gas and electricity the ESC will consider further ring fencing energy distributors to ensure the development of a competitive market place. The ESC is now reviewing its 2001 pre-FRC position paper.

Regulatory accounting information

The ESC will begin reviewing its regulatory accounting guideline in July 2003 to ensure that regulatory accounting information provided by the gas and electricity distributors is accurate, fully consistent with national regulatory reporting requirements and aligned with the distribution price determination reporting templates.

The outcome of the review will be a consultation paper, expected to be released late in 2003, proposing amendments to the existing guideline. Consistency of approach with other regulators will be achieved where possible.

Review of electricity and gas customer protection framework for FRC

The ESC has begun a review of electricity and gas customer protection regulatory instruments to ensure appropriateness for multi-fuel contracts to customers and to recognise the development towards an integrated energy industry.

The first instrument being reviewed is the retail code which sets the minimum standards for contractual offers for small customers in the competitive energy markets. Consultation has occurred with all relevant parties to achieve national consistency where appropriate. Barriers to competition identified by the retailers are also being addressed.

Submissions are currently being sought on the draft code and the revised energy retail code will be finalised by September 2003.

FRC market monitoring

The ESC is examining options for a system for monitoring price, service and efficiency of transfers in the retail market, including market share, market prices, efficiency of customer transfers, and customer perceptions.

Consumer organisations and market research firms will be consulted in developing options.

The ESC has established a Market Code of Conduct Advisory Committee incorporating retailer and customer representatives with an independent chairperson nominated by industry. Committee minutes are posted on the ESC website <<http://www.esc.vic.gov.au/electricity630.html>>.

The committee's primary role is to monitor the effectiveness of the Market Code of Conduct for Retailing Gas and Electricity in the Victorian



Markets and make recommendations for change. The advisory committee released an issues paper in July. Submissions are being accepted until the end of August 2003. Consultation will occur with other jurisdictions to ensure consistency before a revised code is published.

Distribution and retail performance monitoring and reporting

The January–June 2002 electricity distribution comparative performance report was published in December 2002 and the 2002 calendar year report is currently being drafted. In future the ESC will publish a calendar year report only, unless exceptional events in the networks necessitate an exception report.

The January–June 2002 electricity retail performance report was also published in December 2002 and 2002 calendar year retail performance report in July 2003. The 2002 annual performance report of gas distributors and retailers will be published in July. The ESC is reviewing its performance indicators to determine the most appropriate indicators to monitor the electricity and gas competitive market and, from 2003, will publish one comparative performance report for the energy utilities.

Distribution and retail audits

The ESC conducted audits of DNSPs in early 2003 to determine the level of distributors' compliance with regulatory obligations. This project forms a key part of the on-going reporting, monitoring and compliance program. The conduct of audits is a licence condition which arises from the ESC's objectives to:

- facilitate efficiency in regulated industries and the incentive for efficient long-term investment
- ensure that the misuse of monopoly or non-transitory market power is prevented.

Auditors initial reports indicate a high level of compliance, in particular that the accuracy of routine reporting on reliability is satisfactory. However, several areas need improvement.

Audits of gas and local electricity retail businesses (i.e. AGL, Origin, TXU) are in progress covering compliance for the calendar year 2002.

Electricity

2006–10 electricity distribution price review

The ESC has begun planning and preliminary work leading up to the next electricity distribution price review due for completion by December 2005.

It anticipates releasing an issues paper for consultation on the form of regulation, as per the requirements of the national electricity code, in August.

Review of metrology procedures

The NEM jurisdictional regulators have begun the joint review of metrology procedures implemented in each jurisdiction as required by the national electricity code.

The review is to be completed by 31 December 2003 and will consider whether barriers to consumers adopting economically efficient metering solutions arise from these procedures. The review will include meter ownership, technology, and effects on the wholesale and retail pricing signals and consumption decisions.

The review will consider, principally, metering installations types 5 and 6 and options for developing a single nationally consistent metrology procedure. The participating jurisdictions are: NSW (IPART), Victoria (ESC), Queensland (OCA), SA (ESCOSA), Tasmania (OTTER) and the ACT (ICRC). The ESC is coordinator.

Interval meter rollout for Victorian electricity customers

The ESC released a paper in November 2002 outlining its position on the general introduction of interval meters for all customers in the electricity market. The position paper presented the ESC's analysis that the benefits of interval meters exceed the costs and outlined a staged rollout based on meter type. The comments on the cost/benefit analysis and the regulatory and implementation issues raised by the issues paper are being assessed and a further paper will be published in September.

Public lighting review

The ESC is reviewing excluded service charges for the operation, maintenance and repair of public lighting to assess whether the charges are fair and reasonable. It will release a paper in July. Consultation will occur with relevant parties including all public lighting customers. The review is expected to be completed late in 2003.

Distribution loss factors

Work to review the DLF calculation methodology has been suspended through the period of the annual DLF approval process. The review involves other jurisdictions through the Utility Regulators Forum. The working group is expected to complete the review by December 2003.

Gas

Reliability of supply

The ESC will begin a project in July regarding the development of a reliability of supply policy consistent with the head of power provided in s. 33 of the *Gas Industry Act 2001*.

VENCorp cost recovery

In accordance with s. 69 of the Gas Industry Act the ESC approved VENCorp's recoverable FRC expenditure and recovery mechanism in September 2002. The decision provided for an annual re-set of tariffs within certain rebalancing constraints.

VENCorp is required to seek ESC approval for its final capitalised expenditure and advise of any tariff re-set. Following consideration by the retail market consultative committee (comprising retailers, distributors, customer representatives) VENCorp submitted its audited final capitalised expenditure to the ESC, together with proposed tariffs for 2003–04 on 15 May 2003.

The ESC is reviewing VENCorp's revised FRC cost recovery tariffs for 2003–04. A decision was to be issued in July 2003.

Western Australia

Office of Gas Access Regulation (OffGAR)

Proposed access arrangements

There are two covered pipeline systems in WA for which access arrangements have yet to be approved: the Dampier to Bunbury natural gas pipeline (DBNGP) and the Goldfields gas pipeline (GGP).

In addition, a proposed access arrangement is yet to be submitted for the Kalgoorlie to Kambalda pipeline, following an extension of time granted by the regulator until 1 July 2004.

DBNGP

The final decision on the DBNGP was issued on 23 May 2003. The decision was to not approve the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd and 47 amendments are required before the regulator will approve the access arrangement. The regulator issued the following summary of his decision:

The final decision that I have published today concerns the terms of access proposed for the Dampier to Bunbury Natural Gas Pipeline ("the



Pipeline”) by Epic Energy. The Pipeline is the main gas transmission system between Dampier in the north west of Western Australia to Bunbury in the south west of Western Australia.

Under the *National Third Party Access Code for Natural Gas Pipeline Systems* (“the Code”) I am required to decide whether to approve the access arrangement proposed by Epic Energy for the Pipeline. If I decide not to approve the access arrangement then I must state the amendments that would have to be made in order for me to approve it. One of the matters to be included in an access arrangement is a Reference Tariff for a service that is likely to be sought by a significant part of the market. The process of considering whether the access arrangement complies with the Code involves a balancing of competing interests of different parties.

In balancing those interests, I have decided that the price that Epic Energy paid for the Pipeline was not based upon a sound commercial assessment and the consequences of this for the financial viability of Epic Energy have less weight in balancing Epic Energy’s legitimate business interests against the interests of users and the public interest in having competition in markets and in a supply of competitively priced gas.

I have also decided that Epic Energy’s purchase price for the Pipeline was not affected by any representations or statements by the Government as to the tariffs that may apply under the Code subsequent to 1 January 2000. However, I have found that statements by Government at the time created expectations for users as to the tariff that would apply in the future and that is a material consideration.

I have decided that in addition to Epic Energy’s proposed Firm Service, the proposed Access Arrangement should include a Reference Service with the characteristics of the Firm Service but allowing for:

- receipt of gas into the Pipeline at any location on the Pipeline;
- a minimum contract term of no greater than two years; and
- the timely provision to users of metering information so they can assess their potential liability for penalty charges and take steps to avoid those charges.

Also, I have found that the Reference Tariff for the Firm Service should be revised to reflect the following parameters:

- an initial capital base of \$1,550 million as at 31 December 1999
- a present value of total revenue (with a discount rate equal to real pre-tax rate of return of 7.4%) of \$768.53 million in dollar values as at 31 December 1999.

The levels of the Reference Tariff that will result from these parameters will vary depending upon cost allocations and the structure of the tariff. However, I have estimated that the average 100% load factor tariff that would result from these parameters is \$0.95/GJ as at 1 January 2000 and \$1.01/GJ as at 1 January 2003.

This average tariff of \$1.01/GJ as at 1 January 2003 corresponds to a tariff for the T1 service applicable under current regulation of \$1.08 and represents a 5.1% increase in the full haul T1 service tariff of \$1.02/GJ that was introduced on 1 January 2003 and currently applies.

This statement has been prepared to assist members of the public in understanding the overall nature of the decision that I have made. It is not intended to be a substitute for the reasons for my decision and does not form part of my reasons for the purposes of the Code.

GGP

The draft decision on the proposed access arrangement for the GGP was handed down on 10 April 2001.

Legal action was initiated by the owners—Southern Cross Pipelines Australia Pty Ltd, Southern Cross Pipelines (NPL) Australia Pty Ltd and Duke Energy WA Power Pty Ltd, Goldfields Gas Transmission Pty Ltd—in the Supreme Court, but was discontinued when the regulator issued a notice on 6 November 2002 stating he will amend his draft decision taking into consideration, among other things, the DBNGP decision of the Full Court of the Supreme Court on 23 August 2003.

On 27 March 2003 the owners applied to the NCC for revocation of coverage of the GGP pipeline under the code. While the NCC considers this, work on amending the draft decision is proceeding.

On 10 June 2003 WMC Resources Ltd obtained an order nisi requiring the regulator and the state of WA to show cause before the full court why a writ of prohibition should not be issued against the regulator forbidding him from considering or determining whether, under clause 21(3) of the Goldfields Gas Pipeline Agreement, the code shall not have effect in relation to the GGPoldfields gas

pipeline. The court required WMC Resources to serve the orders nisi on WA and the Minister for State Development, Tourism and Small Business. The matter has been listed for a two-day hearing on 6 and 7 October 2003.

Full retail contestability costs

As reported in the last *Network*, AlintaGas Networks Pty Ltd (AGN) submitted a proposal on 24 June 2002 seeking the regulator’s binding approval under s. 8.21 of the code to estimated capital costs of developing systems associated with the introduction of FRC in the WA mid-west and south-west gas distribution systems. AGN also sought the regulator’s non-binding agreement to non-capital costs under s. 8.37.

The regulator could not approve the costs of developing systems associated with the introduction of FRC under s. 8.21 as the code did not provide for the approval of such costs. After raising this matter with the National Gas Pipelines Advisory Committee (NGPAC) an amendment was made to allow these costs to be approved by the regulator. This amendment was introduced on 17 April 2003 as the Seventh Amending Agreement.

On 26 June 2003 AGN submitted a new proposal seeking the regulator’s binding approval under s. 8.21 of the code that FRC capital costs be considered in their next review of the access arrangement scheduled to commence on 1 April 2004. AGN also sought the regulators non-binding agreement to non-capital costs under s. 8.37. The regulator issued an information paper, for which submissions closed 1 August 2003.

Information on the status of gas access regulation in WA is available on the OffGAR website at <www.offgar.wa.gov.au>.

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Office of the Rail Access Regulator

The objective of the Rail Access Regime in WA is to establish a regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations.

The Public Transport Authority (PTA), formally the WA Government Railways Commission, is the owner and operator of the urban passenger network, and WestNet Rail (WNR), a subsidiary of the Australian Railroad Group, is the owner and operator of the freight network.



The regulator's role is to oversee, monitor and enforce compliance with the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000*.

During the past 18 months the regulator has completed the determinations outlined in the table below.

The determination for the floor and ceiling costs for certain specified railway lines on the freight network is being finalised, as is the development of KPIs that would apply to WNR's operations.

The completed determinations are available for review on the Office of the Rail Access Regulator's website <www.railaccess.wa.gov.au>.

The regulator, in approving the costing principles that apply to the operations of WNR and the PTA, indicated the intention to assess an appropriate CPI-X mechanism in the escalation of ceiling revenues. Its report on the use of a CPI-X index, can be accessed on the ORAR website and represents a preliminary review of the issues related to the CPI-X calculation. The regulator welcomes any comments before starting the next stage of the study, which would include the

construction of a simple model to test the proposed CPI-X methodology.

South Australia

Essential Services Commission of South Australia (ESCOSA)

Electricity supply industry

SA electricity retail competition

ESCOSA has begun a study to examine how effective the deregulated market for household and small business power has been since its introduction on 1 January.

The study flags key indicators ESCOSA proposes to use to monitor the extent and form of competition in the SA electricity market. These include the:

- degree to which consumers are transferring between electricity retailers
- types and prices of retail electricity contracts being offered in the market

- quality of information about electricity contracts available to consumers.

The study will also examine whether retailers are making competitive offers to SA's low-income consumer groups, as competition entails not only more market entrants but also equity of access to retailer products and services.

Publication of monitoring data on ESCOSA's website will commence from 30 June this year.

SA electricity metering and demand management project

ESCOSA is using external consultants to undertake work on the project which is designed to help it determine whether to support the mandatory extension of interval meters to classes of consumers who consume less than 750MWh/a, or whether some other demand management program should be supported.

The project will analyse the financial benefits of reducing/moving electricity loads which currently contribute to SA's peak load; assess whether the benefits to consumers of changing these loads exceed the costs and, if so, identify an implementation strategy and timetable, and associated costs for ETSA Utilities over the period 2005–10.

The project should be completed by December 2003.

Demand management for distributors—guideline

In August 2002 ESCOSA released a discussion paper *Demand Management for Distributors*. It highlighted issues relating to the possible framework for meeting the electricity distributor's statutory demand management obligations. ESCOSA sought submissions on the issues raised, and on any areas of concern to respondents.

In January 2003 ESCOSA released a position paper *Demand management for distributors*, which recommended that a comprehensive guideline be prepared to assist ETSA Utilities meet its demand management obligations, to improve the availability of information to interested parties and to establish a transparent process for assessing the alternatives.

A draft guideline was then developed and released for public comment. The draft guideline will be assessed in light of submissions received, with the final guideline taking effect from 1 July 2003.

	PTA		WNR	
	Submission	Approval	Submission	Approval
Segregation arrangements	Dec 01	24 Apr 02 (D1) 6 Jun 02 (D2) 11 Apr 03 (F)	Nov 01	24 Apr 02 (D1) 6 Jun 02 (D2) 8 Apr 03 (F)
Review of access proposals that may preclude others from further access			Nov 01	8 Mar 02 (D2)
Train path policy	Dec 01	6 Dec 02 (D2) 17 Mar 03 (F)	Nov 01	15 Aug 02 (D1) 31 Oct 02 (D2) 27 Feb 03 (F)
Train management guidelines	Dec 01	6 Dec 02 (D2) 17 Mar 03 (F)	Nov 01	15 Aug 02 (D1) 31 Oct 02 (D2) 27 Feb 03 (F)
Costing principles	Mar 03	11 Apr 03 (D2) 11 Apr 03 (F)	Nov 01	28 Jun 02 (D1) 27 Sept 02 (D2) 23 Dec 02 (F)
Over-payment rules	Jul 03	Currently being reviewed	Oct 01	28 Jun 02 (D1) 27 Oct 02 (D2) 30 Apr 03 (F)
Floor and ceiling costs (including development of Access Pricing Model)	Not yet submitted by WAGR		Dec 02	Currently being finalised 12 Apr 02 and 11 Nov 02 (A)
WACC (2002)	Not applicable	1 Jul 02 (D2)	Not applicable	1 Jul 02 (D2)
WACC (2003)	Not applicable	1 Jul 03 (D2)	Not applicable	1 Jul 03 (D2)
KPIs	Not applicable	To be considered when above determinations are completed	Not applicable	Currently being finalised

Notes: (D1)—Draft determination by the regulator for second round of public consultation
(D2)—Final determination by the regulator
(F)—Final approval of all arrangements by the regulator
(A)—Access pricing model audits



Electricity distribution price review

In June 2005 the current pricing arrangements for ETSA Utilities established under the Electricity Pricing Order come to an end.

The distribution price review is being conducted to meet ESCOSA's obligation to establish new arrangements to apply for the 2005–10 regulatory period. There are a number of aspects to the review.

Efficiency carryover mechanism

ESCOSA has released its working conclusions on the efficiency carryover mechanism that it intends to apply in the 2005 price determination. The working conclusions were reached following consultation after the release of the discussion paper.

They seek to give certainty to ETSA Utilities and other interested parties by concluding on as many aspects of the efficiency carryover mechanism as possible.

Service standard framework for ETSA Utilities

As part of the electricity distribution price review, ESCOSA has recognised the importance of ETSA Utilities delivering an appropriate quality of electricity supply, and has undertaken an extensive customer survey to determine the standards that consumers seek and are prepared to pay for. ESCOSA is currently in the process of developing a new set of customer service standards to apply to ETSA Utilities for 2005–10 based on the findings.

ESCOSA's initial thoughts on a possible new framework were released for public consultation in April.

Prescribed and excluded services

The electricity pricing order (EPO) deals with two categories of services provided by ETSA Utilities: prescribed services and excluded services.

The existing EPO definitions expire at the end of this regulatory period. ESCOSA therefore needs to replace them in accordance with the code.

A discussion paper was released which sought comment on the manner in which: distribution services may be defined and allocated; excluded services might be regulated; and consequential financial allocation issues.

ESCOSA will review submissions received with a view to forming a set of working conclusions on prescribed and excluded services and associated matters by August 2003.

ESCOSA will then release a working conclusions paper to provide ETSA Utilities with certainty about

what will be defined as prescribed and excluded services and how they will be treated for the purpose of forecasting expenditure for these services.

Inquiries/Reviews

AGL SA's billing system

An independent review undertaken on ESCOSA's behalf has found that AGL SA has breached the electricity retail code as it relates to the compliance obligations for the issuing of estimated bills.

The basis of the breach was that in March this year approximately 4500 customers were sent estimated accounts based on incorrect historical consumption data.

AGL has undertaken remedial action and ESCOSA has sought assurances from the AGL SA board that this action has resolved the billing problem and that measures are in place to prevent a reoccurrence. On the basis of legal advice from the Crown Solicitor, and following a thorough assessment of the information available to it, ESCOSA decided not to exercise its discretion to prosecute AGL SA.

Combination tariff review

ESCOSA has released its draft decision on the inquiry into supply charges for combination tariffs and multiple connection points.

The inquiry related to a uniquely SA arrangement which applied pre-FRC, where a single supply charge was applied even though there were multiple connection points. This arrangement resulted in significant supply charge increases upon commencement of FRC as these customers then faced separate supply charges for each meter.

The draft decision is a precursor to ESCOSA's final determination and proposes a three-part scheme to manage the impact of supply charges on customers.

As the final determination has potential cost implications for ETSA Utilities, a final decision will be made by mid-June in time to revise ETSA Utilities' tariffs from 1 July 2003.

ETSA Utilities compliance with the low voltage standards

An audit was commissioned by ESCOSA in March this year to establish the extent of ETSA Utilities' compliance with the voltage standards in the *Electricity Act 1996* and the electricity distribution code. The audit was commissioned following numerous anecdotal complaints by consumers of voltage variances.

The central elements of the audit were to review the systems and processes that ETSA Utilities has in place to ensure that the distribution network is designed, installed, operated and maintained in a way that ensures the safeguarding of voltage standards. Actual consumer voltage complaints and the procedures utilised by ETSA Utilities in resolving them were examined.

The audit established that ETSA Utilities complies with all the regulatory voltage requirements, and that its design and operating compliance practices are comparable with other Australian distribution companies.

The audit did, however, identify room for improvement in the timeliness of complaint resolution and communication with complainants as some internal complaint resolution timeframes were not met.

AGL SA and ETSA Utilities call centres' review

ESCOSA ordered a review of the performance of ETSA Utilities and AGL SA call centres following widespread consumer complaints about access to the centres—particularly AGL—following the commencement of FRC.

The audit found that neither AGL SA nor ETSA Utilities had breached any code requirements as a result of performance.

ETSA Utilities' performance was in accordance with the distribution code but the report identified major problems with AGL SA's performance.

AGL SA has given an assurance to ESCOSA that it will improve performance. ESCOSA will continue to monitor the centre's performance.

Inquiry into generator rebidding

The Minister for Energy has released ESCOSA's final report on the inquiry into generator bidding and rebidding on 25–28 January 2003, following disruption to the gas supply at Moomba.

On 30 January the minister referred the inquiry to ESCOSA under Part 7 of the ESC Act to consider the impact of the rebidding activity on SA consumers and the security of supply.

The inquiry was coordinated with investigations by NECA into the same events.

On 12 May 2003, after public consultation, ESCOSA released a supplementary report confirming the earlier conclusions.



Ports

Price review

In November 2002 ESCOSA released an opening discussion paper for the ports price review entitled *Should price regulation continue?*. It received seven submissions and in May released a progress report on price regulation based on an assessment of the submissions.

ESCOSA found grounds for continuing some form of price regulation in seven of SA's privately run commercial ports. However, the strength of those grounds varies between ports and cargoes.

Charges for the provision and use of certain essential maritime services, such as navigational aids, berths and wharves, were capped for three years from 31 October 2001 following the privatisation of SA ports.

ESCOSA will now carry out the second stage of the process by seeking submissions on what form any price regulation after 31 October 2004 should take.

Rail

Tarcoola–Darwin railway

Among the functions contemplated for ESCOSA under the AustralAsia (Third Party Access) Code is the development and publication of guidelines relating to both price and non-price terms and conditions of third-party access.

ESCOSA has developed service guidelines and standards in accordance with the requirement under s. 9 of the code for the access provider to provide information about access.

The guideline seeks to satisfy the requirements of clause 9 of the code only by contemplating service policies and standards within the context of several factors. They were released for public comment in March 2003. Submissions are currently being reviewed with the release of the final guidelines to follow in July 2003.

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New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

Electricity

2004 review of distribution network prices

IPART's current determination on the regulatory arrangements applying to NSW distribution network service providers (DNSPs) expires on 30 June 2004. To prepare for a new determination IPART reviewed the form of regulation that should apply from 1 July 2004. The new arrangements will include a weighted average price cap for the distribution component of network tariffs, a pass through, transmission charges and a price cap for miscellaneous charges and monopoly fees.

In November 2002 IPART released an issues paper discussing these arrangements. IPART has also released draft models and an information request to collect the required data, which are available from the IPART website.

IPART has received the DNSP's submissions. They are available on the IPART website, together with the populated information requests. General submissions are due on 4 July 2003.

IPART has engaged Meritec Ltd to review each DNSP's operating and capital costs. Meritec should provide a draft report in June 2003.

IPART will release a draft determination in November 2003 and a final determination in March 2004, for 1 July 2004 implementation.

Gas

Retail

During late June 2003 IPART approved default retail tariff increases for Origin Energy, Country Energy and AGL Retail Energy from 1 July 2003, under existing voluntary pricing principles.

AGL Retail Energy's 8.8 per cent average increase was a result of increased costs of purchasing gas, some additional costs relating to the implementation of full retail contestability, and tariff changes already agreed in its voluntary pricing principles.

Country Energy's 9 per cent average tariff increase allows recovery of costs relating to the implementation of full retail contestability (no allowance had previously been made) and tariff changes already agreed in its voluntary pricing principles.

Origin Energy's increase of 5 per cent to all tariffs was agreed under its current (extended) voluntary pricing principles.

IPART has also agreed to miscellaneous fees charged by ActewAGL in the Shoalhaven area for inclusion in its voluntary pricing principles, and to some new miscellaneous fees charged by AGL Retail Energy in March 2003, subject to Origin Energy providing information.

IPART also expects to agree to voluntary pricing principles for customers of ActewAGL in Queanbeyan and Yarrowlumlula.

Networks

The next review of the access arrangement of AGL Gas Networks (AGLGN) will occur during calendar year 2004, after IPART agreed in April 2003 to a six-month extension of the revisions submission date to 31 December 2003 and the revisions commencement date to 1 January 2005.

The date changes were requested to permit AGLGN to understand with more certainty the potential changes to the policy and legal environment in which the next access arrangement review would be conducted, given the pending review of the national gas code, before submitting its proposed revisions to IPART.

The next review of the access arrangement of Country Energy Gas (CEG) will also occur during calendar year 2004, IPART having agreed to the same date revisions as AGLGN.

These date changes were sought so CEG could align the regulatory process for Wagga Wagga with the AGLGN review process, allowing time for CEG to explore its regulatory options for part of their covered network which is currently regulated under AGLGN's access arrangement, and reduce regulatory costs.

IPART will shortly release a timetable for the reviews.

Transport

IPART is undertaking its annual review of maximum fares that can be charged on NSW government-owned public services. This includes Sydney's CityRail passenger train network and State Transit Authority buses and ferries in Sydney and Newcastle. A final determination is to be released in August 2003. New fares will be implemented on 1 September.

IPART has a five-year standing reference to recommend fare changes for private transport operators. It is currently reviewing fares in the private bus, private ferry, and taxi industries.



An issues paper was released in April. A taxi workshop was held on 6 June and a private bus and ferry workshop on 26 June. Recommendations will be forwarded to the Minister for Transport in August for implementation on 1 September 2003.

Water pricing

Metropolitan Water

In mid-May 2003 IPART released determinations setting prices for water, wastewater and stormwater services provided by Sydney Water Corporation, Hunter Water Corporation, Gosford City Council and Wyong Shire Council.

The determination sets a two-year price path to apply from 1 July 2003 until 30 June 2005. While there were variations in price outcomes across the water agencies, in each case IPART increased water usage prices by 1 per cent in real terms for each year and reduced water access charges by between 1 and 5 per cent in real terms.

IPART hopes at the next review to have better information about the supply demand balance in the Sydney and central coast areas, particularly in light of potential environmental flow requirements for catchment rivers. It is also seeking better information, through a household survey, on the likely affordability impacts of pricing decisions.

Price outcomes for wastewater charges varied across the businesses, with wastewater charges for Hunter Water Corporation increasing in real terms by 1 per cent for each of the next two years, reflecting significant capital expenditure requirements on wastewater treatment and transport systems.

Bulk water

IPART has indicated its intention to review bulk water prices to apply from 1 July 2004. It previously set prices charged by the Department of Land and Water Conservation through its business unit State Water, in 2001.

However, following the NSW election in March 2003, State Water has been transferred to the Ministry for Energy and Utilities and the relevant functions of the Department of Land and Water Conservation have been incorporated into the new Department of Infrastructure, Planning and Natural Resources.

IPART's proposed review will be deferred pending resolution of responsibility and cost allocation issues arising from the functional realignment.

Greenhouse gas abatement scheme

In December 2002 the NSW Parliament passed legislation setting up a greenhouse gas abatement scheme to operate from 1 January 2003 to 31 December 2012. IPART is currently setting up the administrative systems to support the scheme.

Public information

The scheme website <www.greenhousegas.nsw.gov.au> gives stakeholders immediate access to information about the scheme. Fact sheets will be available shortly.

Copies of the presentations from public workshops held in February and March 2003 are also available, along with sample calculations for applying each of the rules. Application forms for accreditation as abatement certificate providers as well as detailed guides to applying will be available in August for download.

On-line certificate registry

In May IPART appointed LogicaCMG to develop and operate the on-line certificate registry for the scheme. The registry will maintain registers of accredited abatement certificate providers and abatement certificates. The registry will be completed in September 2003.

Applying to become an accredited abatement certificate provider

IPART is currently conducting trial accreditations with potential abatement certificate providers. The categories being trialled are the Generation, DSA, and Large Users Rules.

Final application forms along with detailed guides to applying, standard accreditation conditions, indicative audit requirements and case studies of applications will be available for download from the scheme website in August.

Audit panel

IPART is now appointing auditors to the greenhouse gas abatement scheme audit panel. The purpose of the panel is to allow scheme participants and IPART to draw on the technical knowledge of the panel in assessing applications for accreditation. Auditors will be certified according to their technical knowledge under specific rules (i.e. generation, demand side abatement, large user and carbon sequestration).

Large customers electing to manage own benchmark

Large customers, who use more than 100 GWh per annum with at least one site using more than 50 GWh, and persons carrying out state significant development can elect to manage the benchmark targets associated with their own electricity use. The Minister for Planning determines persons who are carrying out state significant development under the *Environmental Planning and Assessment Act 1979*. Once accepted by IPART, the elective benchmark participants take over the responsibility for compliance with the benchmark from their retail supplier.

As an elective benchmark participant they will also be entitled to apply for accreditation under the *Greenhouse Gas Benchmark (Large User Abatement Certificates) Rule No.4 of 2003*. This allows for the creation of non-tradeable abatement certificates (LUACs) from abatement activities not directly associated with electricity use, for example reducing greenhouse gas until 30 June 2003 to elect for the 2003 and 2004 calendar years.

Annual compliance reporting for benchmark participants

IPART is currently developing the reporting format for annual greenhouse gas benchmark statements. Benchmark participants must submit an annual statement for the 2003 compliance year by 1 March 2004. IPART will report to the Minister for Energy by June 2004 on benchmark participants' compliance with their 2003 greenhouse gas benchmarks.

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ACT

Independent Competition and Regulatory Commission (ICRC)

Current inquiries

Network pricing inquiries for electricity, water and wastewater

Electricity—The ICRC's has begun inquiries into network pricing for electricity for the period commencing 1 July 2004.

Papers on 'Prescribed and excluded services' and 'Form of regulation in part E of the national electricity code' have been released. ICRC has now also released an issues paper on other matters relating to the form and content of the price path for distribution services. Submissions close 11 August 2003.



The ICRC has appointed consultants to undertake a review of the capex and opex submission made by ActewAGL. This work is currently underway and a report is expected by early September. ICRC expects a report from ActewAGL on its willingness to pay for the study.

A draft report on electricity distribution prices is expected to be issued on 7 November 2003.

Water—A draft report is being prepared on water and wastewater services with a new price determination to commence from 1 July 2004. An issues paper has been released on ACTEW's submission for a revised price path to take effect from 2003–2004. The issues paper has heightened public debate on the question of pricing for water, the need for additional investment in major new capital works to address the ACT's current water shortages, and the role of price in demand management.

Submissions are due by 19 August and a draft report will be released on 14 November.

Gas network price inquiry

The ICRC will delay the submission of a revised access and pricing arrangement for gas network services in the ACT. The current arrangements apply until 30 June 2004. With some uncertainty regarding the foreshadowed review of the national gas access code and the present major commitment by both ActewAGL and the ICRC to the current electricity and water/wastewater price review, ICRC agreed to a six-month extension of the present price path and deadline for presentation of a new access arrangement. The delay was agreed to after consulting major consumers of gas services in the ACT and surrounding areas.

Contestability of network infrastructure works

The ICRC has been issued a reference by the ACT Treasurer to advise whether there is a net benefit to the general community in making electricity infrastructure works contestable.

Network infrastructure development historically has been undertaken by the ACT's electricity distributor, ActewAGL Distribution. Elsewhere in Australia this type of work is contestable.

The study aims to provide an overall assessment of whether contestability would be in the interests of the community as a whole, in terms of financial cost, safety and reliability of electricity supply. It will also address the cost implications for the asset base of the network operator and for future

asset maintenance. Issues relating to capital contributions and the ownership of the new assets are also likely to be raised.

The ICRC will report to the Treasurer by mid-December.

Utility Act issues

Additional gas licence issued in the ACT

The ICRC has agreed to Energy Australia's application for a licence to retail gas in the ACT.

This brings to four the number of retailers to supply gas in the territory, the others being ActewAGL, Energex and Country Energy. The additional licence increases the potential for sale of bundled energy products in the territory, potentially offering price and service benefits to consumers.

Consumer Protection Code

The ICRC has amended the Consumer Protection Code, an industry code under part 4 of the *Utilities Act 2000*. The code outlines the basic rights of customers, consumers and utilities with respect to access to, and provision of, utility services.

When the code was first developed it was recognised that it might need to be amended to accommodate changes in the energy market. With the opening of the gas and electricity retail markets the code was considered deficient, particularly with respect to the marketing of energy services. The amended code was notified in June.

Minimum standards for gas network operations

The ICRC has approved new standards for gas network operations (minimum standards), developed by the territory's gas distributor, ActewAGL Distribution. The standards were revised to remove duplication with the Gas Retail Market Business Rules to Support Retail Competition in Gas in the ACT and NSW, which were developed by the Gas Market Company and introduced after ActewAGL's minimum standards were finalised in April 2002. The amended standards are intended to complement the business rules.

Gas distributors are required, as a condition of their operating licences, to adopt network operation standards that set out their policies, practices and procedures for the supply of gas to suppliers.

Other matters

Water abstraction charge

In response to a request for advice from the ACT government the ICRC is undertaking a review of the level and methodology for determining the appropriate rate for the water abstraction charge (WAC). The WAC represents the economic value of the water that is taken for consumptive purposes within the ACT. The current level of the WAC is 10 cents per kilolitre and the government is proposing to increase the rate in two steps up to 25 cents per kilolitre by 1 July 2004.

The ICRC will consider issues including the use of the WAC as a means of improving the price signals in water tariffs as a demand management tool. The ICRC will also consider the likely impact of higher WAC-induced water prices on lower socio-economic households or households having large non-discretionary water usage requirements.

An issues paper has been released and submissions close 15 August. A draft report will be released on 5 September 2003.

Full retail competition in electricity

From 1 July 2003 there is full retail competition (FRC) for electricity in the ACT. Currently ActewAGL is the only retailer offering discounts to customers who sign up for their FRC tariff offers which include a bundling of electricity, gas, ISP and/or full digital and video services. Other electricity retailers are interested in the ACT market and Energy Australia recently applied for and was granted a gas distribution licence in the ACT.

The ICRC has set a fallback safety net price for electricity in the ACT to apply for at least three years. ActewAGL is offering discounts on this safety net price, and it is expected that other new entrants will also offer discounts on the regulator determined price. ACT consumers who take up a competitive retail offer may return to the safety net price if they wish. The ICRC will be monitoring the churn rate in the market to the take-up of competitive retail offerings.

Tasmania

Office of the Tasmanian Energy Regulator (OTTER)

Natural gas distribution and retail

In April 2003 the Tasmanian government signed a development agreement with Powerco Limited for



the construction of stage 1 of a gas distribution system. Stage 1 is the 'backbone' network that will provide supply to up to 23 large industrial and commercial customers in nine Tasmanian centres. The stage development agreement is subject to conditions.

OTTER has received applications for licences to authorise the construction and operation of the stage 1 network. Wanganui Gas Ltd has withdrawn its retail licence application and Powerco has applied for one.

Powerco and the Tasmanian government are negotiating to finalise the stage 2 development agreement for a network rollout to domestic customers. Powerco estimates it will eventually pass approximately 100 000 homes and will take five to seven years to complete. Powerco's medium to long-term target is 50 000 customer connections.

Electricity price investigation

The draft report on the investigation into maximum prices for distribution services and retail tariffs was released on 19 June 2003.

Retail tariffs

It is proposed that the maximum average prices for a basket of retail tariffs will:

- increase in 2004 by the CPI plus 0.8 per cent
- be held constant in real terms thereafter, i.e. increase in line with CPI only.

These draft proposals are based on Transend's submission to the ACCC for transmission charges from 1 January 2004. It is expected that the ACCC allowance will be less than that requested by Transend. Any reduction will flow through to tariff customers.

Aurora may adjust tariff rates within this limit, but there are additional safeguards to ensure a reduction in charges in real terms for low consumption residential customers, and for a reduction in off-peak tariffs. Other safeguards will protect customers from any large increases in any one year.

Retail services

A benchmark cost to serve of \$76 (excluding FRC, NEM entry and renewable energy certificate costs) has been adopted. In addition, a net retail margin of 2.35 per cent takes account of Aurora's actual working capital needs and low level of risks faced by Aurora Retail over the next three years.

OTTER has devised a set of retail service performance indicators for key services.

Distribution service

OTTER proposes that the maximum allowable revenues for distribution services will increase by \$2.78m in 2004 from the 2003 estimate of \$125.76m. Thereafter the maximum allowable revenues are expected to fall slightly each year.

To help OTTER assess the efficiency and effectiveness of Aurora's capital expenditure programs and future operating expenditures, expert advice was obtained from PB Associates. Their findings were that the capital expenditures made from 1 July 1998 to 30 June 2002 were appropriate. However, they proposed a small reduction from Aurora's initial proposals of operating and maintenance expenditures and significant reductions from the capital expenditure proposal.

In 2002 Aurora researched customers' willingness to pay for improvements in reliability and quality of distribution services and then developed five options. OTTER accepted three as representing value for money for customers. The performance improvement program will substantially improve reliability in poor performing areas.

OTTER has devised an incentive regime that will penalise or reward Aurora depending on whether it fails or exceeds the target level of service, and a customer payment for lengthy or multiple outages.

Meters and meter data services

The provision of meters and meter data will be regulated as a specific service from 2004. It has been estimated that the average daily charge for residential meters (including meter reading and other operating costs) will be 7.17 cents per meter per day in 2004.

Reliability and Network Planning Panel update

Performance measures

The Reliability and Network Planning Panel (RNPP) submitted its report on power system performance measures and standards to OTTER in March 2003. Performance measures have been identified for system control, generation, transmission and distribution functions.

The report recommended that the regulatory pricing reset process incorporate performance targets for the network businesses, considering that both the regulator (for distribution) and the ACCC have flagged their intentions to include incentive payments linked to specific performance targets.

For generation, the report noted the paucity of comparative data appropriate to the Tasmanian situation needed to develop realistic targets. The process of developing management plans (assets/service) was felt to be a more appropriate mechanism for negotiating performance targets for the initial period.

Reviews of standards and guidelines

The RNPP began its review of the system controller directions guidelines taking into account two directions issued by the system controller during 2002. Consultation with code participants and interested parties is in progress.

The RNPP is also conducting reviews of capacity reserve standards and frequency operating standards.

Consultation papers have been published.

The review was to be completed by end-July 2003.

Reliability review

The RNPP has completed its 2002 review of the reliability of the Tasmanian power system and submitted its report to OTTER.

The report provides an assessment of the outlook for power system reliability in the next two years and supports this assessment with factual data from previous years. The report is available at <www.energyregulator.tas.gov.au>.

Government Prices Oversight Commission (GPOC)

Urban water pricing compliance review

GPOC has completed its 2001–02 annual audit on the extent of compliance by councils with their obligations for full cost recovery for their water and wastewater businesses in accordance with national competition policy water industry reform. The audit found a generally high level of compliance.

GPOC was also asked by the Minister for Local Government to look at issues surrounding efficient pricing and the use of property-value based charges where two-part pricing is not used, or to set the fixed component where two-part tariffs apply.

GPOC considered that the absence of two-part pricing creates inefficiencies and cross-subsidies, irrespective of whether property values, connections size or any other measure is used to allocate costs. However, these inefficiencies may be less than those when the cost of administering a metering scheme outweighs the benefits.



Any volumetric rate that does not reflect the LRMC of providing additional water is inefficient.

The use of property value or connection size to allocate fixed costs is not necessarily inefficient, and neither does it represent a cross subsidy, provided that the charges do not exceed the value that a consumer places on connection to the network.

Metro Tasmania pricing policies

The third investigation into the pricing policies of Metro Tasmania Pty Ltd has concluded. The final report includes GPOC's recommendations in relation to:

- The appropriateness of Metro's pricing policies including comparison with like operators in Tasmania and elsewhere in Australia.
- The efficiency of the public transport services delivered by Metro and the effectiveness of the current arrangement with the Tasmanian government including incentive mechanisms for the purchase of services, having regard to the cost of delivery and service levels. GPOC also provided advice on suitable indicators for the measurement of both efficiency and effectiveness with a view to their being adopted into future community service agreements.

The report also contains recommendations on the appropriate maximum fares to be charged by Metro as well as an appropriate index by which fares would be adjusted each year to compensate for changes in operating costs.

The Minister for Infrastructure Energy and Resources will consider GPOC's recommendations before making the Metro Order 2003. The order will include a basket of maximum fares to be charged by Metro for the three years following 1 November 2003. It will also contain the index by which Metro's fares and the community service activity payment will be adjusted annually.

MAIB pricing policies

GPOC is undertaking its third investigation into the pricing policies of the Motor Accidents Insurance Board (MAIB). MAIB is the Tasmanian government business enterprise that administers the Tasmanian Motor Vehicle Accident Injury Insurance scheme.

GPOC released the MAIB *Pricing policies investigation—issues paper* in March and a draft report in July 2003.

The investigation's terms of reference require GPOC to provide a final report by 31 August 2003.

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Queensland

Queensland Competition Authority (QCA)

Electricity

In accordance with requirements established in QCA's final determination on the regulation of electricity distribution (May 2001), QCA approved minor revisions to the distributors' pricing principles statements, as well as the distribution prices to apply for 2003–04.

The QCA completed its review of the form of regulation to apply in the next regulatory period commencing 1 July 2005 and released a draft decision indicating it will maintain the current form.

In large part this reflected the QCA's reluctance to move away from the current fixed revenue cap arrangements so soon after implementing them and with only limited information and experience against which to assess how the current regulatory regime was functioning and upon which to base its decision.

Following consideration of submissions received in response to the draft decision, the QCA maintained its decision.

In its final determination the QCA valued easements at historical cost but included some discussion of the appropriate longer term valuation approach. It will investigate this issue further during the current regulatory period.

An April 2003 discussion paper outlined options for the valuation of easements and sought submissions on the most appropriate valuation methodology. The QCA received several submissions and a decision should be released shortly.

The QCA is continuing to work on the development of a service quality incentive mechanism to be incorporated into the regulatory arrangements to apply in the next regulatory period. Consultants, Meyrick and Associates, together with Pacific Economics Group, have provided a draft report and the QCA will consult on it shortly.

The distributors' December quarter 2002 service quality reports, as well as a brief summary prepared by the QCA, were posted on the QCA's website in May 2003.

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Gas

In November 2002 the QCA released a discussion paper *Gas distribution: monitoring service quality*. Eight submissions were received in response. A final decision was then released, providing for annual reporting of a range of service quality measures.

The Queensland gas distribution service providers resubmitted their 2001–02 ring-fencing compliance reports by 28 February 2003 as required. Both service providers demonstrated significant progress in addressing identified deficiencies, but neither demonstrated compliance with all requirements.

The QCA released for public consultation a set of draft general accounting guidelines for gas distribution network service providers in March. Seven submissions were received and taking into account the issues raised the QCA published its *General accounting guidelines for gas distribution network service providers* under s. 4.2 of the National Third Party Access Code for Natural Gas Pipeline Systems and released an accompanying document outlining its decision on this issue. The guidelines, public submissions and decision are available on the QCA website.

The QCA has assessed and approved applications received from Allgas Energy Limited for pass-through of the costs associated with taking on the role of market operator in the Queensland gas market and from Allgas Energy Limited and Envestra Limited for pass-through of the costs of the QCA fees for (part of) 2002–03 and 2003–04. These costs have been incorporated into the approved 2003–04 tariff schedules for the respective networks.

In accordance with their approved access arrangements, Allgas and Envestra submitted revised tariffs to the QCA in April/May 2003. The QCA was satisfied they were consistent with the price paths and side constraints in the access arrangements and approved the variations in May 2003. These revised tariffs, which are available on QCA's website, became effective on 1 July 2003.

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Water

Burdekin Haughton Water Supply Scheme

In January 2002 the ministers directed the QCA to assess matters relating to the gazetted prices for channel and river irrigators in the Burdekin River Irrigation Area within the Burdekin Haughton Water Supply Scheme.



Following the release of a draft report in September 2002, and after considering all available information including submissions, the QCA provided its final report *Burdekin Haughton Water Supply Scheme: assessment of certain pricing matters relating to the Burdekin river irrigation area* to ministers in April 2003. The report was released in May 2003.

It concluded that current water prices do not incorporate any excess return on capita, based upon a consideration of the capital contributions made by relevant parties, relevant capital costs, and the appropriate weighted average cost of capital for BRIA users. The ministers accepted this conclusion.

The QCA also identified the circumstances under which it would be appropriate to charge a positive rate of return on scheme assets. As required by the ministers' direction, the QCA's analysis accepted as a given the lower bound costs of the scheme.

Extraordinary circumstances

The QCA has been directed by its ministers to identify the general pricing principles which should underpin the treatment of infrastructure investments made in response to extraordinary circumstances, across all regulated industries.

The direction has its origins in the recent circumstances in Gladstone, where the construction of a major pipeline from Rockhampton was being considered to address Gladstone's drought-related water supply problems. Although substantial rainfall averted the immediate need for this investment, the ministers saw a need to develop principles that could be applied to any similar circumstances.

The direction is not specific about what constitutes an extraordinary circumstance for a regulated entity. However, it is likely that the event must be extraordinary in nature and in impact.

Given that the potentially broad-ranging impact will be of interest to all stakeholders in the industries regulated by the QCA, relevant parties have been invited to express their interest in the investigation.

The QCA has prepared a short paper outlining the proposed scope of the investigation and some preliminary issues that may be relevant to its assessment. A copy of the paper is available from the QCA or its website at <www.qca.org.au>.

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Local government

Payments to Queensland's 125 councils arising from the QCA's fifth review of councils' progress in implementing competition reforms under the Local Government Financial Incentive Payments Scheme were approved by the ministers on 16 May 2003. In total more than \$117.3m of the base allocation of \$141.5m has been paid to Queensland councils since the scheme began in 1998.

The sixth and final review in respect of 731 nominated business activities and 110 COAG water activities began on 1 July 2003 and covers competition reforms implemented to 30 June 2003.

A report and recommendations for payments will be submitted to the ministers by 28 February 2003.

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Rail

Standard access agreements

When the QCA approved QR's standard operator agreement for coal carrying train services in October 2002, the approved agreement only catered for when the access holder was also the train operator, and not for when they were a user (e.g. mine) and the train services were subcontracted to a third party (an access holder agreement). The access agreement also did not contain a performance regime that would sit within the standard access agreements.

On 16 December 2002 QR submitted for the QCA's approval a draft access holder agreement to cater for when the access holder subcontracts the operation of train services. QR proposed a 'back-to-back' structure, whereby all access rights and obligations are vested with the access holder.

The onus is on the access holder to ensure that the train operator complies with its obligations, as QR will not have a direct contractual relationship with the train operator.

Following consultation with stakeholders the QCA sought a number of amendments designed to provide greater clarity and certainty about each party's obligations and rights, and to better reflect the back-to-back contractual structure. The QCA approved QR's access holder agreement on 29 April 2003.

The performance regime, which will sit within the standard access agreements, has continued to be developed. The regime's intention is to encourage

compliance with contractual commitments within the agreements, but in a way that avoids recourse to legal action. The performance regime forms part of the overall performance provisions contained within the agreements. QR has proposed five key performance indicators which will be trialled for 12 months from 1 July 2003. QR will use the data collected during the trial period to develop, in consultation with industry, an incentives/disincentives mechanism to apply to the indicators.

Reference tariffs

QR's access undertaking sets out reference tariffs for defined coal carrying train services in central Queensland. Since the approval of QR's access undertaking the QCA has reviewed a number of elements of these tariffs. Some issues recently considered by the QCA are discussed below.

First, reference tariffs for the nine clusters of mines in the central Queensland coal region were determined on the basis of forecast traffic volumes. To limit its exposure to volume risk, QR's access undertaking includes a mechanism that allows for the review of a cluster's reference tariff if the traffic volume falls outside a range of plus or minus 10 per cent of the forecast value, and this deviation is reasonably expected to be sustained.

On 26 March 2003 QR submitted for the QCA's approval an amended reference tariff for the Newland cluster in the central Queensland coal region. QR subsequently revised this submission on 24 April 2003. The basis for the application was two consecutive quarterly volume trigger events for this cluster in the September and December quarters 2002, where coal haulage volumes were greater than the upper bound threshold. If the QCA approves the application, reference tariffs for this cluster will be reduced. A decision is expected in the September 2003 quarter.

Second, on 2 April 2003 QR submitted an application for an indicative reference tariff for train services servicing the new Hail Creek coal mine. The QCA released an issues paper and the consultation period concluded in April 2003. The main issues to arise from the consultation process were the appropriate mechanism to determine contributions to common costs for new rail spurs, the efficiency of the proposed operational expenses and maintenance costs, and whether the spur construction costs related solely to below rail assets.

The QCA engaged an independent consultant to assess the opex and maintenance costs and the asset valuation issue, while analysis is continuing on the contributions to common costs issue.



The QCA expects to make a decision in the September 2003 quarter.

In June 2003 the QCA received an indicative reference tariff submission from QR for the new Rolleston mine. The key issues are similar to those for the Hail Creek submission. The QCA is likely to make a decision in the last half of 2003.

Review of yard control services

At the time the QCA approved QR's access undertaking in December 2001, management of yard control services at QR's marshalling yards remained a responsibility of its above rail groups. The current arrangement may lead to a conflict of interest when a third party requires access to one of these yards. Consequently, QR's access undertaking provided for a review of the provision of yard control services at the Jilalan and Callemondah marshalling yards and for the QCA to approve QR's implementation of the review's findings.

On 3 June 2003 the QCA received a submission, for its approval, from QR on proposed reforms to management arrangements at these marshalling yards. The submission detailed that the below rail issues at the Callemondah yard are expected to be significant, while they are expected to be minor at the Jilalan yard. This has resulted in differing approaches to reforming yard control services within these yards. The proposed reforms at Callemondah entail the entire transfer of yard control services to QR's below rail group (Network Access), while QR has proposed yard control services at Jilalan be managed by Network Access, but performed (under contract) by the staff of one of QR's above rail groups (Coal & Freight Services).

The QCA released QR's submission for public comment and the consultation period ended on 20 June 2003. The QCA is assessing the responses and expects to make a decision in the September 2003 quarter.

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Ports

The Dalrymple Bay Coal Terminal (DBCT) has been declared by the Queensland government for the purposes of third party access under Part 5 of the *Queensland Competition Authority Act 1997*.

In September 2001 Prime Infrastructure was granted a 99 year lease of the DBCT by the Queensland government (the lease is for 50 years, with an option to extend by another 49 years). Prime has a contractual obligation under the lease

agreement to prepare and submit an access undertaking to the QCA on behalf of the terminal owner, DBCT Holdings (a government owned corporation).

On 20 June 2003 Prime submitted a draft access undertaking to the QCA, its main focus being pricing and capacity issues. The QCA has prepared a request for comments paper and will be seeking submissions on the draft access undertaking.

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Northern Territory

Utilities Commission of the Northern Territory

Inquiry into network access code

The Utilities Commission delivered its final report on the effectiveness of the NT's electricity network access code to the regulatory minister in April 2003.

It made a number of recommendations for change, with six key recommendations relating to the inclusion of a formal code review process, clarification of various pricing issues, provision for the regulator to issue guidelines when a material uncertainty exists regarding the conduct of code participants and a general approval power for the regulator (and a derogation or exemption power in favour of the regulator) in relation to the network technical code and the network planning criteria.

The report is with the minister for consideration.

Network pricing approvals

To allow for any changes that may occur following the review of the network access code, the code has been amended to extend the first regulatory control period by 12 months to 30 June 2004. In April 2003 the Utilities Commission determined revenue caps for the extended year 2003–04 consistent with the methodology applied for previous years.

In March 2003 Power and Water reported that it had again over-recovered revenue against the revenue cap for 2001–02. In light of this second year of over-recovery, and as Power and Water also advised that an over-recovery is anticipated for 2002–03, the Utilities Commission has given additional scrutiny to the tariff proposals for 2003–04. As a result the final tariff schedules approved in May 2003 for use in the financial year

commencing 1 July 2003 were reduced against the levels initially proposed by Power and Water.

The decision paper setting out the rationale for its revenue cap determinations and tariff approvals with respect to 2003–04 was published in July.

Generation prices oversight

Following NT Power's withdrawal from the NT's electricity market effective in September 2002, and recognising the pricing implications that can arise from monopoly service provision, the government approved prices oversight of Power and Water's generation business by the Utilities Commission to ensure that the wholesale energy prices paid by contestable customers would be similar to those that would occur in a competitive environment. The regulatory framework proposed by the Utilities Commission is currently being considered by the government.

Jabiru electricity price review

The Utilities Commission has completed a review of costs associated with supplying electricity to the Jabiru township. In accordance with the terms of reference provided by the minister, the findings are confidential to the government and those parties directly involved, namely the Power and Water Corporation and Energy Resources of Australia.

Water and sewerage price structure review

The Utilities Commission has completed the first stage of a review of Power and Water's water and sewerage pricing structures. A report has been provided to the regulatory minister summarising the broad findings and identifying the main options for change to Power and Water's pricing structures.

Once further consultations have occurred on the issues raised in this stage 1 report, a further report may be provided nominating the final recommendations for change, and identifying the likely price effects on individual classes of customers arising from such changes.

2004 regulatory reset

The Utilities Commission has commenced work on the form of regulation and associated issues for the second regulatory control period commencing on 1 July 2004. An issues paper canvassing options for the form of regulation and other associated issues was published in early July 2003.



Network loss factors

The Utilities Commission has issued terms of reference for a compliance review of Power and Water's application of requirements of schedule 13 of the code in establishing network loss factors. Once the compliance review is completed, consideration will be given to whether changes are warranted going forward in the methodology used to estimate the loss factors.

Standards of service

The Utilities Commission is preparing an issues paper dealing with the development and implementation of a standards-of-service framework in the NT's electricity industry. This initial paper, which is expected to be released in August 2003, will be predominantly concerned with the broad structure that such a framework should take, and in identifying aspects of monopoly services (to which standards are to apply) that have significant impact on costs and/or consumer value.

Licensing

The Power System Control licence issued to Power and Water expired on 30 June 2003, with Power and Water having applied for a licence for a further five years. The Utilities Commission has flagged its intention to undertake a review of the role and functions of Power System Control in the NT context, targeting a 30 June 2004 completion date. The licence has been extended on the basis that variations may be required to the licence conditions to reflect the outcome of the Utilities Commission's review.

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Contributing to Network

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