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# Regulatory issues

## Electricity

### **Amendments to Victorian transmission regulatory arrangements—authorisation of amendments to the National Electricity Code**

On 15 October 2002 the Commission received applications for authorisation (A90850–52) 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.

The key proposed changes were:

- amendments to ensure greater clarity in the allocation of roles and responsibilities between the Victorian Energy Networks Corporation (VENCorp) and SPI PowerNet
- amendments to ensure explicit recognition in Victoria’s derogations of VENCorp’s not-for-profit status
- amendments to ensure that, in accordance with its not-for-profit status, VENCorp is able to recover all of its operating costs (including all payments that it is required to make to the owners of Victorian transmission assets)
- amendments to ensure that VENCorp is able to recover all costs associated with all network augmentations that meet the requirements of the ACCC regulatory test, as and when those costs are incurred
- ‘housekeeping’ amendments to existing derogations as well as amendments to delete a large number of spent provisions.

The Commission received four submissions from interested parties on the proposed code changes.

On 18 December 2002 the Commission granted interim authorisation to the applications, while allowing the proposed changes to operate from 1 January 2003 when the Commission assumed responsibility for the regulation of VENCorp and SPI PowerNet under the code.

The interim authorisation was granted subject to a number of conditions. Condition C1 addressed issues relating to practical aspects of setting VENCorp’s revenue under the proposed amendments, recognising that VENCorp’s revenue for 2003–08 had been set under the code as it currently existed. Conditions C2–7 were considered necessary to deal with a number of drafting errors, or clauses, that needed clarification in the proposed amendments.

The Commission issued its draft determination on 5 February 2003. Interested parties were provided the opportunity to request a pre-determination conference but did not consider one necessary. The Commission subsequently released its final determination on 19 March 2003.

In its final determination, the Commission granted conditional authorisation to the proposed amendments. The condition imposed required the removal of a provision requiring the Commission 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 Commission considered that such a provision raised practical issues and was inconsistent with the procedure adopted for other TNSPs.

Overall, the Commission considered that 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.

### **Extension of reserve trader sunset (draft determination)—authorisation of amendments to the National Electricity Code**

On 19 December 2002 the Commission received applications for authorisation (nos A90864–66) of amendments to the National Electricity Code. The applications were submitted by the National Electricity Code Administrator (NECA).

The proposed amendments are to sections 3.12.1(a) and 3.12.1(b) of the code and relate to the extension of the current reserve trader sunset provisions. The current reserve trader arrangements expire on 1 July 2003.

The Commission received submissions from Wambo Power Ventures Pty Ltd, Edison Mission Energy Australia Ltd and TXU.

The Commission issued its draft determination on 9 April 2003. It is subject to three conditions which require that, no later than 1 July 2004, NECA initiates a review of the provision for the National Electricity Market Management Company Limited (NEMMCO) to enter into reserve contracts in accordance with section 3.12 of the code, to inquire into and recommend on whether the provision for NEMMCO to enter into reserve contracts are allowed to expire on 1 July 2005 or become a permanent feature of the code.

On 16 April 2003 NECA wrote to the Commission seeking to vary the applications for authorisation to include an amendment to 'Part 7—provision of non-scheduled reserves by NEMMCO clause 3' to extend its operation until the proposed sunset date of the reserve trader provisions. As a result, the Commission re-opened consultation on this matter until 16 May 2003. The Commission expects to re-issue a draft determination on these matters in June 2003.

## Airservices Australia

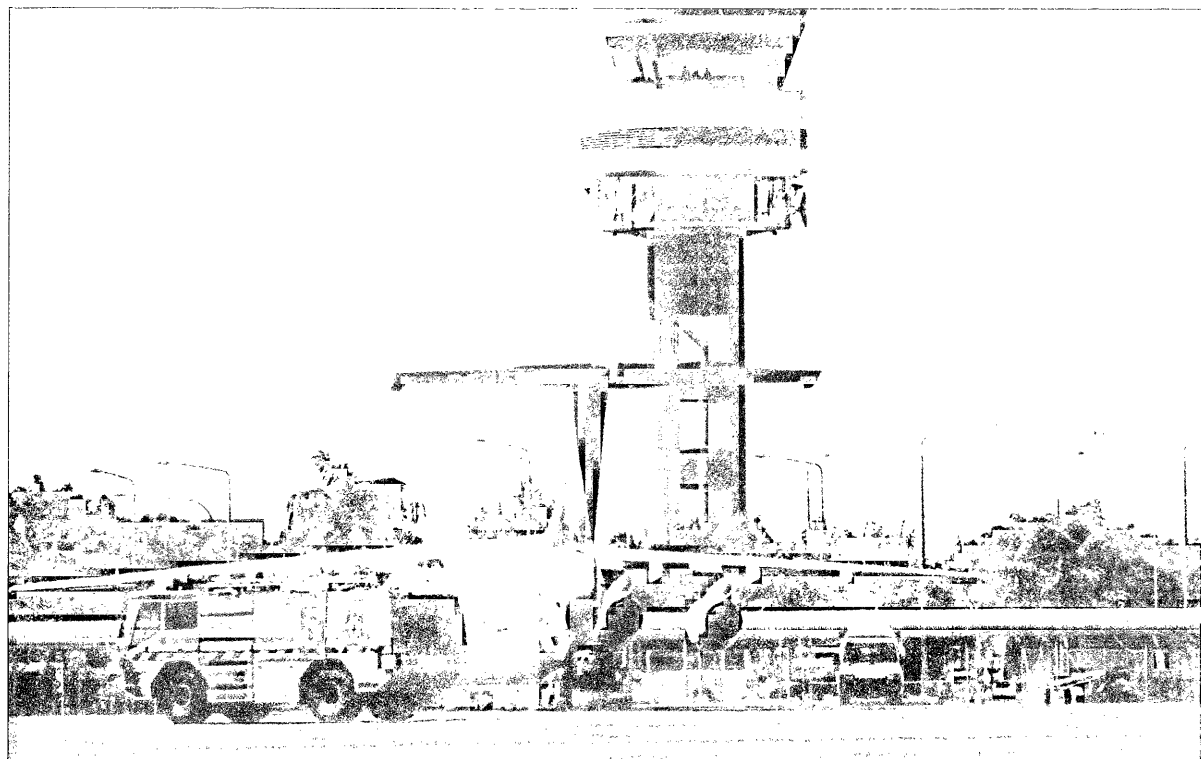
### Price notification

In May 2003 the Commission announced a preliminary view to object to a pricing proposal from Airservices Australia (Airservices) lodged under the *Prices Surveillance Act 1983*.

Airservices is a statutory monopoly established under the *Air Services Act 1995* (AS Act) as a commercial authority responsible for a range of functions, such as providing safe and environmentally sound air traffic management and related services. It also has a responsibility under this Act to promote and foster aviation. Airservices operates 26 air traffic control towers, 15 fire stations and an extensive network of facilities throughout the country, with approximately 2900 employees.

### Previous price notification

On 23 July 2002 the Commission made a decision not to object to a temporary price increase of 5.1 per cent across all services, including an average increase of 5.9 per cent for terminal navigation (TN), an average increase of 8.1 per cent for aviation rescue and fire fighting (ARFF) ports and an increase of 3.9 per cent in en route navigation for the 2002–03 financial year.



In its 2002 decision, however, the Commission also recommended that for future pricing proposals Airservices adopt a longer term view of price setting and allow for a thorough review of its cost structure.

### **The current pricing proposal**

In April 2003 Airservices submitted a pricing proposal for the 2003–04 financial year for a general 6.95 per cent increase to uncapped TN and ARFF ports. No price increases were sought for en route navigation.

Airservices claimed that the price increases were required to get a reasonable rate of return after a downturn in aviation activity (due to the Iraq war, the ongoing threats of terrorism and the SARS outbreak). Airservices also argued that as the aviation industry faces considerable uncertainty in the short to medium term, a long-term approach to pricing was impractical and undesirable at this time.

In support of its proposal, Airservices referred to its history of sharing gains with customers and specifically noted that a one-off windfall gain in 2002–03 from a cross-border leasing arrangement enabled the early reversal of en route prices, bringing the reduction forward by six months and saving the industry close to \$5m. It also identified that over a five-year period ending in 2001–02, it had previously achieved \$100m in cost reductions, which had led to real price reductions of 25 per cent.

### **Submissions on Airservices' proposal**

Submissions were received from parties including Qantas, Virgin Blue, the International Air Transport Association, the Board of Airline Representatives Australia and the Queensland Government. All submissions argued against the increased prices. Most parties noted that Airservices had not addressed issues previously raised by the Commission in an earlier price notification and suggested that Airservices should adopt a long-term approach to pricing.

There was also widespread concern at the prospect of Airservices increasing its prices at a time when (as result of a downturn in activity) many businesses in the aviation industry are already financially struggling.

### **Preliminary view**

In May 2003 the Commission released its preliminary view in which it objected to the price increases sought by Airservices, but not to current prices applying for a further 12 months until 30 June 2004.

The main reason was the Commission's continued concern about Airservices' short-term approach to pricing. It felt that a longer term pricing model has significant advantages over Airservices' current approach to pricing in that it gives stronger incentives for Airservices to provide services at the lowest possible cost.

The Commission was also disappointed that Airservices was unable to provide sufficient information to allow the Commission to independently verify the value of its assets despite being advised last year of the Commission's concerns on this issue.

Overall the Commission considers that Airservices has not made a strong case for price increases, particularly at a time when the aviation industry as a whole is under significant duress.

### **Next steps**

In assessing Airservices' proposal, the Commission is undertaking a process of public consultation which started with the release of an issues paper. The Commission is currently seeking comments on its preliminary view and expects to make a final decision on the proposal by late June.