

# Essential Services Commission Act 2002

## INQUIRY UNDER PART 7

## TERMS OF REFERENCE

### Retail Energy Prices

#### 1. BACKGROUND

- 1.1. Pursuant to Part 7 of the *Essential Services Commission Act 2002* (“**the Act**”) an industry Minister may, by written notice, refer any matter to the Essential Services Commission of South Australia (“**the Commission**”) for the Commission to conduct an Inquiry into that matter.
- 1.2. By virtue of section 14D of the *Electricity Act 1996*, the electricity industry is a regulated industry for the purposes of Part 7 of the Act.
- 1.3. By virtue of section 18B of the *Gas Act 1997*, the gas industry is a regulated industry for the purposes of Part 7 of the Act.
- 1.4. The Hon Tom Koutsantonis, Minister for Energy and Mining (“**the industry Minister**”) is the Minister administering the *Electricity Act 1996* and *Gas Act 1997*.
- 1.5. The Commonwealth budget released on 25 October 2022 indicated that the Commonwealth Treasury has estimated a 56% increase in retail electricity prices, given that forward wholesale contract prices for electricity are expected to remain elevated.
- 1.6. The ACCC has raised concerns that higher international and domestic gas prices may flow through to long term gas supply agreements in the domestic market.
- 1.7. In addition to those matters, there have been significant and continuing disruptions to world and Australian energy markets, which have been a driver of higher domestic retail electricity and gas prices. However, there is almost no transparency on how the level and timing of those price increases impacts on consumers, given the financial and physical trading and hedging arrangements in energy markets.
- 1.8. It is important that there is increased transparency in energy pricing in order to ensure that consumers can have confidence that the energy system is working in their long-term interests to deliver reliable and cost-effective energy services in the low-carbon energy transformation.

## 2. REFERENCE

I, TOM KOUTSANTONIS, Minister for Energy and Mining, pursuant to section 35(2) of the Act, hereby refer to the Commission the matter described in clause 3.1 for the Commission to conduct an Inquiry into that matter pursuant to Part 7 of the Act in accordance with these Terms of Reference.

## 3. TERMS OF REFERENCE

The following are the Terms of Reference for the Inquiry specified pursuant to section 35 of the Act:

- 3.1. The Commission is to conduct an Inquiry into evidence of, or the potential for, a party (retailer, generator, trading entity or relevant other party) in the electricity industry and/or the gas industry to earn or have earned sustained super profits to the financial detriment of South Australian energy consumers, having regard to:
  - 3.1.1. the structure and operations of the National Electricity Market's electricity price settlement process
  - 3.1.2. the structure and operations of the associated electricity financial trading arrangements
  - 3.1.3. the structure and operations of the natural gas trading market
  - 3.1.4. the vertical integration of energy (electricity and/or gas) entities, and
  - 3.1.5. the potential impact of international gas market outcomes on the abovementioned markets and entities.
- 3.2. In undertaking this inquiry, the Commission should consider:
  - 3.2.1. the cost, terms and duration of financial risk management contracts, including (without limitation) the cost, terms, volumes, availability and duration of fuel supplies and internal pricing and physical risk management cost structures
  - 3.2.2. the cost, terms and duration of energy transport contracts
  - 3.2.3. other relevant costs, and
  - 3.2.4. any other factors the Commission considers relevant.
- 3.3. The Commission may make recommendations as it considers appropriate, in particular in relation to any changes that could be made to the regulatory framework to better protect South Australian consumers' long-term interests in the delivery of reliable and cost-effective energy services in the low-carbon energy transformation, including appropriate incentives and penalties.

#### **4. CONDUCT OF INQUIRY**

- 4.1. The Commission's Inquiry process shall consist of at least the following:
- 4.1.1. the publication of a notice of Inquiry, as required pursuant to section 36 of the Act, no later than 7 days following receipt of these Terms of Reference
  - 4.1.2. an opportunity for public submissions on the Inquiry Terms of Reference
  - 4.1.3. regular updates on progress and interim findings to the Minister, the Department of Energy and Mining and the Australian Energy Regulator, and
  - 4.1.4. the submission of a draft Inquiry report to the Minister no later than 1 May 2023 and the Inquiry report within 14 days of the Minister's response to that draft.

