

In response to the various arguments raised by TXU, Gillard J said, among other things, the Tariff Order does not preclude the consideration of costs, and that the consideration of costs did not necessarily mean that the price determination was the result of rate of return methodology.

Given the breadth of discretion granted to the Office, it is not fatal that elements of the methodology used to set prices for distribution are consistent with rate of return regulation. The question is whether, taken as a whole, the approach is incentive based or price based. Gillard J was satisfied that the determination was made in accordance with the Tariff Order and the relevant provisions of the legislation, and made within power. The proceedings were dismissed with costs.

NEW VENCORP POWERS FOR DEMAND SIDE MANAGEMENT

Amendments to the *Electricity Industry Act 2000* are currently being considered by the Victorian Parliament. The *Electricity Industry Acts (Further Amendment) Bill 2001* proposes to increase the ability of the Victorian Energy Networks Corporation (“**VENCorp**”) to manage electricity demand. It is part of a number of government initiatives designed to increase investment and attract new generation facilities to Victoria. VENCorp is a statutory corporation that has major operational, planning and development roles in both gas and electricity in Victoria.

Clause 10 of the Bill seeks to insert a new section 79A. This section provides that:

In addition to any other powers under this Part, VENCorp may, with the approval of the Minister:

- (a) facilitate the development of arrangements relating to the management of electricity demand; and
- (b) enter into agreements and arrangements relating to the development and implementation of proposals for the management of electricity demand.

This power will enable VENCorp to act as a ‘market maker’ – to seek out expressions of interest from retailers for demand side management proposals and to encourage commercial agreements between retailers and customers which reduce electricity demand in periods of excess demand or supply shortage. This role is to be facilitative, in that VENCorp will advertise for consumers to come forward with offers of contracts and will facilitate their implementation.

The Bill does not envisage VENCorp entering into contracts for demand management capacity or bidding for electricity. As a safeguard, any actions undertaken by VENCorp pursuant to the new powers will require ministerial approval, and Minister Broad has stated that she will not allow VENCorp to participate in the market.

The proposed amendments will supplement VENCorp’s existing ability to address power shortages and will result in VENCorp playing a more effective role in Victoria’s energy management.

NEW ESSENTIAL SERVICES COMMISSION BILL

The *Essential Services Commission Bill 2001* is expected to be introduced in the Spring Session of Victorian Parliament. Commencing on 1 January 2002, the Essential Services Commission