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Independent Pricing and Regulatory Tribunal of NSW (IPART)
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Dear IPART,

Positive Pass Through Event Application

In accordance with clause 3.1(a) of Schedule 4 of IPART's 2010 electricity regulated retail price determination (the **2010 Determination**),¹ TRUenergy gives notice to IPART that a Positive Pass Through Event (**PPTE**) has occurred.

The binding Small-scale Technology Percentage (**STP**) prescribed for 2012 under the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 2)* (the **Regulation**) is materially different to the 2012 STP obligation assumed by IPART in the 2011 regulated electricity retail prices update (**2011 Annual Review**)². Accordingly, TRUenergy is seeking IPART's approval to pass through to customers the resultant increase in costs associated with the actual obligations imposed on TRUenergy under the Regulation. Given that the Regulation does not include an STP for 2013, this application relates only to the 2012 STP and resultant costs.

This cost pass through application sets out the information required under clause 3.1(b) of Schedule 4 of the 2010 Determination.

Details and date of PPTE (clauses 3.1(b)(1) and (2) of Schedule 4 of the 2010 Determination)

On 22 February 2012 the Regulation was made and tabled in both houses of Parliament on 28 February 2012.

The Regulation set the binding STP for 2012 at 23.96% increasing from the indicative non-binding STP of 16.75% for 2012 used by IPART in the 2011 Annual Review. The binding 2012 STP represents a significantly larger liability on TRUenergy under the small-scale renewable energy scheme (**SRES**) than the indicative non-binding STP used by IPART in the 2011 Annual Review.

Under the 2010 Determination, a Pass Through Event includes a Regulatory Change Event (**RCE**). A RCE is defined³ to include:

"... (b) the coming into operation of an Applicable Law... that has the effect of substantially varying...

(d) the nature, scope, standard or risk of the Pass Through Services⁴; or

(e) the manner in which a Standard Retail Supplier is required to undertake any activity in order to provide the Pass Through Services, including obligations...

3) under any Green Energy Scheme..."

¹ IPART, "Review of Regulated Retail Tariffs and Charges for Electricity 2010 to 2013 - Final Determination" (March 2010), page 23.

² IPART, "Changes in regulated electricity retail prices from 1 July 2011 - Final Report" (June 2011).

³ IPART, "Review of Regulated Retail Tariffs and Charges for Electricity 2010 to 2013 - Final Determination" (March 2010), page 46.

⁴ Pass Through Services means services of or in relation to Supplying electricity to Small Retail Customers under a Standard Form Customer Supply Contract.

The 2012 STP prescribed by the Regulation, is the coming into operation of an amendment to an Applicable Law as defined in the 2010 Determination.

The binding 2012 STP satisfies criteria (d) of the REC definition, because retailers now face different obligations under the SRES as the binding 2012 STP is significantly higher than the 2012 STP estimate used by IPART in the 2011 Annual Review and incorporated in the current 2011/12 prices. The requirement for retailers to meet significantly increased SRES targets will impose greater, or "different", obligations on retailers, and will have the effect of substantially varying the nature, scope, standard and risk of their electricity services. Accordingly, the setting of the binding 2012 STP qualifies as a RCE under the pass through provisions of the 2010 Determination.

The binding 2012 STP also satisfies criteria (e) of the REC definition, because SRES meets the definition of a Green Energy Scheme⁵. The binding 2012 STP is significantly higher than the 2012 STP estimate used by IPART in the 2011 Annual Review and incorporated in the current 2011/12 prices. Consequently the "manner" in which retailers meet their SRES obligations has substantially varied. Accordingly, the setting of the binding 2012 STP is a RCE under the pass through provisions of the 2010 Determination.

In order for the Regulation to be considered a PPTe the Materiality Test is required to be satisfied. This is discussed further below.

Increase in costs due to the PPTe (clause 3.1(b)(3) of Schedule 4 of the 2010 Determination)

As a result of the PPTe, the incremental efficient costs of the binding 2012 STP are the costs of complying with the binding 2012 STP, less the costs already accounted for in retailers' 2011/2012 prices.

This means that the calculation of the revised efficient costs must be reduced by the SRES costs set in IPART's 2011 Annual Review, which incorporated a 2012 STP estimate of 16.75%.⁶ This accords with IPART's obligation to ensure that a retailer does not recover costs to the extent provision for such costs has already been made.⁷

This is consistent with IPART's approach to the 2011 cost pass through for the Renewable Energy Target (RET) split. IPART assessed the incremental costs of the RET split as the "total efficient costs incurred by the retailers from complying with the large-scale renewable energy target (LRET) and SRES from 1 January 2011 less the allowances provided for the costs of complying with the RET scheme in the 2010 determination".⁸ The cost of complying with the LRET and SRES in a given year was determined by IPART by multiplying the number of Renewable Energy Certificates a retailer was required to surrender in that year by the cost of a Renewable Energy Certificate.

The detailed calculations are outlined in the attached (confidential) spreadsheet. For the 2012 calendar year the total impact of the increase in the STP is \$24.0M (\$10/11).

Proposed amount and timing of PPTe (clauses 3.1(b)(4) and (5)) of Schedule 4 of the 2010 Determination)

TRUenergy notes that, as occurred in 2011, the increased cost for 2012/13 from this PPTe should be addressed as part of the 2012 annual review being conducted by IPART and accordingly TRUenergy does not at this stage seek a separate pass through of 2012/13 costs.

⁵ Green Energy Scheme means any mandatory scheme that imposes financial obligations on a Standard Retail Supplier in order to produce a Green Energy Outcome, excluding the Carbon Pollution Reduction Scheme but including the Commonwealth mandatory renewable energy target scheme under the *Renewable Energy (Electricity) Act 2000* (Cth) and the New South Wales Government's energy savings scheme under the ESA.

⁶ IPART, "Changes in regulated electricity retail prices from 1 July 2011 - Final Report" (June 2011), page 44.

⁷ IPART, "Review of Regulated Retail Tariffs and Charges for Electricity 2010 to 2013 - Final Determination" (March 2010), Schedule 4 clause 3.3(d).

⁸ IPART, "Changes in regulated electricity retail prices from 1 July 2011 - Final Report" (June 2011), page 54.

Last year, for a similar SRES pass through item, IPART added a retail margin of 5.4% and applied nine months worth of the real pre-tax WACC to derive the amount to be recovered in the following year's tariffs.⁹ To ensure consistency with previous IPART decisions TRUenergy has used the same approach in this application.

The detailed calculations are outlined in the attached (confidential) spreadsheet. The SRES cost arising from 1 January to 30 June 2012 that TRUenergy is proposing to pass through in 2012/13 is \$1.97/MWh (\$10/11).

Materiality Test (clause 2(c)(1)) of Schedule 4 of the 2010 Determination)

The change in costs resulting from the Regulation must pass the materiality threshold test. The appropriate application of "average annual costs"¹⁰ in the Materiality Test in the 2010 Determination requires the PPTE to result in a retailers efficient, incremental and justified average annual costs incurred from 1 July 2010 to 30 June 2013 to exceed 0.25% of the retailer's total revenue arising out of the regulated retail tariffs for the financial year in which the event occurs. As the 2012 STP is an annual figure the appropriate amount may be the \$24.0M as outlined above. However, given this amount crosses two financial years and Year is defined as a financial year in the 2010 Determination,¹¹ the appropriate amount may be \$12.0M (\$10/11).

However, as the attached spreadsheet shows, the 0.25% of total revenue materiality threshold is easily met either way.

Conclusion

TRUenergy is applying for a PPTE resulting from the final STP for 2012 prescribed under the Regulation. The setting of the binding 2012 STP meets the definition of a Regulatory Change Event and the cost impact of the changes meets the Materiality threshold set in the 2010 Determination. As both the definition of a Regulatory Change Event and the Materiality threshold are met, the Regulation meets the definition of a Positive Pass Through Event.

The efficient, incremental and justified costs resulting from this PPTE for the 2012 calendar year are \$24.0M (\$10/11). Part of this cost from 1 July 2012 to 31 December 2012 should be accounted for as part of the 2012 annual review to be undertaken by IPART for 2012/13 and for the remainder TRUenergy is seeking IPART's approval to pass through a cost of \$1.97/MWh (\$10/11) in the 2012/13 regulated prices.

Should you wish to discuss any of the issues raised in this application please feel free to call me on (03) 8628 1120.

Yours sincerely,



Andrew Dillon
Regulatory Pricing Manager

⁹ IPART, "Changes in regulated electricity retail prices from 1 July 2011 - Final Report" (June 2011), page 60.

¹⁰ IPART, "Review of Regulated Retail Tariffs and Charges for Electricity 2010 to 2013 - Final Determination" (March 2010), page 22.

¹¹ IPART, "Review of Regulated Retail Tariffs and Charges for Electricity 2010 to 2013 - Final Determination" (March 2010), page 48.