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3 February 2004

Dr Thomas G Parry  
Chairman  
Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB Post Office NSW 1230

Dear Dr Parry,

Thank you for the opportunity to comment on the Issues Paper *Review of Gas and Electricity Regulated Retail Tariffs*.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and water customers of Sydney Water, Hunter Water and Australian Inland. We have provided comments on the Tribunal's review in relation to our experiences with customers.

Please contact me or Amanda Hamilton-Foster, Policy Officer, on 8218 5266 if you would like to discuss this matter further.

Yours sincerely

A handwritten signature in cursive script that reads "Clare Petre".

Clare Petre  
Energy & Water Ombudsman NSW



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Independent Pricing and Regulatory Tribunal

Review of Gas and Electricity Regulated Retail Tariffs

*Issues Paper*

February 2004

Response by the

Energy & Water Ombudsman NSW

## **Introduction**

We note that the purpose of this paper is to seek comments on the Tribunal's review of gas and electricity regulated retail tariffs, as requested by the Minister under the Terms of Reference.

While we are not in a position to comment on all areas of the pricing review, in this submission we have raised issues from the perspective of EWON's experience as an independent dispute resolution mechanism for customers of electricity and gas providers in NSW, and water customers of Hunter Water, Sydney Water and Australian Inland. We have included references to the submissions of the retailers, wherever appropriate.

For ease of reference, wherever possible we have adopted the same numbering as the Issues Paper.

## **2 COMPETITION AND REGULATION OF RETAIL ENERGY**

### **2.2 Competition and industry reform in NSW**

EWON notes the Tribunal's information that "The Tribunal needs to consider the effectiveness or otherwise of competition so that it can determine the appropriate form of regulation and nature of regulated tariffs."<sup>1</sup> We agree with the Tribunal that an understanding of the effectiveness of competition, and its impacts on customers, is important to inform any discussion of the role of the regulated tariff. We note that to date there has not been any formal review of the overall effectiveness of retail competition within NSW, although we understand that other regulators are undertaking reviews of this nature.<sup>2</sup>

### **2.3 Retail regulation in NSW**

EWON notes the Tribunal's comments that regulated retail prices "protect customers that do not choose to participate in the competitive market..."<sup>3</sup> These comments are reiterated by Integral Energy, who state "All small retail customers have the ability to enter into market contracts for supply of retail electricity. The regulated retail tariffs are default prices for customers who do not choose to participate in the competitive market."<sup>4</sup> EWON's experience indicates that there are certain customers who are not able to participate in the competitive market, regardless of their desire to do so.

In our experience, there are some customers who are not able to obtain a negotiated contract for their energy supply, either because retailers do not consider them as desirable customers, or because their living arrangements make it difficult to accept the terms of negotiated contracts currently offered by retailers.

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<sup>1</sup> Issues Paper, p.4

<sup>2</sup> For example, the current ESC *Review of the Effectiveness of Retail Competition and the Consumer Safety Net for Electricity and Gas*

<sup>3</sup> Issues Paper, p.4

<sup>4</sup> Submission by Integral Energy, p.15

The first category includes customers with poor credit history, who have their applications rejected when the retailer conducts a credit check. This group also includes customers who have low consumption, and who are unable to obtain quotes for negotiated contracts. We note that a significant number of customers who raise this issue with EWON identify as pensioners. Some customers have advised EWON that they were not offered contracts by retailers because they were not connected to natural gas and retailers would only offer them dual fuel contracts, or that they only wanted to change the supplier of one of their fuels, and the retailer would not offer a single fuel contract. A number of customers in rural areas have complained that retailers will not offer them contracts; many of them advised EWON that retailers said it was too expensive to supply them, or they were simply "out of area."

The second category includes tenants, both public and private, many of who feel they are unable to sign an energy contract for three years, as their housing situation is less permanent. EWON has received complaints from customers who have been forced to move residence during the term of their contract, and have then been charged a termination fee. Customers of exempt retailers, such as residents of residential parks, have also been excluded from the competitive market.

An understanding of the situation of these customers is important to inform the role of the regulated tariff in the energy market. For some customers, it appears that the standard form contract is not a step in their transition to participating in a fully competitive market, but the only means by which they can obtain energy supply. We are happy to explore this issue further with the Tribunal if required.

### **3 WHAT IS THE MOST APPROPRIATE FORM OF REGULATION?**

We note that most of the retailers acknowledge that the current form of regulation needs to change, particularly if tariffs are to achieve full cost reflective levels. Most of the retailers have proposed either a relaxation or abolition of side constraints on individual tariffs, and all are requesting full pass-through of costs.

In their submissions, a number of retailers have recognised that a move towards full cost reflection in standard tariffs may involve considerable increases for some customers, and some have proposed measures for reducing the effect on customers, such as gradual increases over the regulatory period. We understand that side constraints have been used in past pricing determinations to avoid price shocks for small retail customers. However, it appears that there is a divergence of opinion amongst stakeholders as to what level of price increase constitutes a price shock for customers.

The Smith Family has reported that the second highest reason that clients sought emergency assistance was for the payment of utility bills.<sup>5</sup> This suggests that certain customers are already struggling to pay their utility bills, and that any increase could affect these customers adversely. The Tribunal may wish to consider wider community consultation regarding the capacity of small retail customers to absorb the

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<sup>5</sup> *Research and Advocacy Briefing Paper No5*, October 2000, The Smith Family

proposed price increases, particularly if side constraints on individual tariffs are removed.

We note that some retailers are suggesting that their customer assistance or hardship programs will provide a safety net for customers experiencing financial difficulties who may be adversely affected by price increases. In some submissions, it appears that retailers are suggesting that the existence of a hardship program may lessen the need for side constraints as customers experiencing price shocks can be assisted individually through these programs. EWON is supportive of the development of comprehensive programs that provide genuine assistance and long-term solutions for vulnerable customers. However, we note that the programs outlined in the various retailers' submissions vary quite considerably in the services and options they provide customers. With the apparent increasing reliance on hardship programs to provide a safety net for vulnerable customers, the Tribunal may wish to consider reviewing the proposed programs from the retailers to ensure that they offer effective protection from price shocks for customers in financial hardship.

The Tribunal has suggested the option of setting tariffs for new customers at cost reflective levels, while moving existing tariffs towards cost reflective levels over the regulatory period. We are concerned that this may produce inequity, particularly for low-income customers in rental accommodation who are more likely to move and need to establish a "new" account.

## **5 WHAT IS THE MOST APPROPRIATE STRUCTURE FOR REGULATED TARIFFS?**

We note the Tribunal's comments in regards to inclining block tariffs and their recognition that there is "little public information and discussion about the relationship between energy consumption and income in the context of inclining block tariffs..."<sup>6</sup> We have previously commented on this issue to the Tribunal<sup>7</sup>, and in particular our concern that there appears to be insufficient information to determine what level of energy consumption is non-discretionary. We note the Tribunal's advice that their household survey may provide more information on this issue, and we look forward to reviewing the results of this study.

## **6 ON WHAT BASIS SHOULD NON-TARIFF CHARGES BE REGULATED?**

We note that there are currently a number of provisions relating to the application of regulated retail charges, including requirements relating to the levying of a security deposit and rules determining the circumstances when late payment fees must not be levied, and must be waived.<sup>8</sup> It is unclear from the Issues Paper if the Tribunal will retain all of these rules. We suggest that the rules, particularly those regulating late payment fees, provide important protection to vulnerable customers and should be retained.

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<sup>6</sup> Issues Paper, p.13

<sup>7</sup> EWON's response to the *2004 Electricity Distribution Review – Preliminary Analysis – Secretariat Discussion Paper*

<sup>8</sup> *Mid-term review of Regulated Retail Prices for Electricity to 2004 - IPART Report, June 2002*

In addition, EWON is concerned that although retailers have policies to ensure that miscellaneous fees are only levied in accordance with the rules, their actual billing systems may not be able to follow the rules in practice. For example, the rules state that late payment fees must be waived where payment or part payment is made using EAPA.<sup>9</sup> However, we understand that while most retailers' billing systems automatically generate late payment fees and reminder notices, these systems do not automatically remove the fees when a subsequent payment is made with EAPA. The Tribunal may wish to review this issue further when considering the rules and requirements for retail charges.

We note that retail charges are not consistent across gas and electricity retailers. EWON supports the principle of consistency within the energy utilities, and we agree that this may be an area for consideration by the Tribunal.

We note that a number of the retailers have proposed new or increased miscellaneous retail fees, and we have addressed some of the issues arising from these proposals below.

### **Administrative fee on DNSP charges**

We note the proposal by some retailers that they be able to levy an "administrative" or "handling" fee on miscellaneous charges passed through by the DNSPs. We query the basis for levying this fee, particularly as all the retailers are seeking to recover billing and administrative charges through their operational costs.

### **Account establishment fee**

We note that one of the retailers has proposed a retail account establishment fee. We note that in the Draft Determination for Distribution Pricing, the Tribunal has removed the account establishment fee from its list of approved miscellaneous charges.<sup>10</sup> In explaining its reasons for this exclusion, the Tribunal states that "it believes establishing accounts records is a normal part of doing business - and therefore the costs associated with establishing an account are more appropriately recovered through general distribution tariffs."<sup>11</sup> We suggest that these considerations are equally appropriate in the retail sector.

### **Credit card fee**

One of the retailers has suggested that retailers should be able to recover merchant fees from customers who pay their accounts using credit cards. We are concerned that this proposal may be contrary to current legislation that requires retailers to accept certain forms of payment from customers without imposing any charge for using any of the listed forms of payment.<sup>12</sup> EWON believes that it is in the interests of both retailers and customers to offer a range of alternative payment methods to suit different customer needs, and we have supported industry developments in this area.<sup>13</sup>

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<sup>9</sup> *Regulated Retail Prices for Electricity to 2004*, Schedule 2, cl 2 (b)

<sup>10</sup> *NSW Electricity Distribution Pricing 2004/5 to 2008/9*, Draft Determination, Annexure 3, Table 1

<sup>11</sup> *NSW Electricity Distribution Pricing 2004/5 to 2008/9*, Draft Report, p.115

<sup>12</sup> *Electricity Supply (General) Regulation 2001*, clause 30

<sup>13</sup> For example, EWON Annual Report, 2001/2002, p.2