



EnergyAustralia

18th November 2013

Dr Peter Boxall
Chairman
Independent Pricing & Regulatory Tribunal of NSW
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Submitted online at www.ipart.nsw.gov.au

Dear Dr Boxall

Submission on the Draft Decision – Early Termination Fees: regulating the fees charged to small electricity customers in NSW

1. Introduction

EnergyAustralia welcomes the opportunity to make a submission on the Tribunal's *Draft Decision – Early Termination Fees: regulating the fees charged to small electricity customers in NSW*.

By way of a brief recapping, in our submission to the Issues Paper we explained that we opposed the concept of regulated early termination fees (ETFs).

We commented on the health of competition in the NSW electricity market and we offered the view that a highly competitive market is what provides long term benefits to customers, not additional regulation of ETFs.

We observed that vigorous competition and existing consumer protections around ETFs in the National Energy Customer Framework (NECF) already provide adequate protections to ensure that ETFs are reasonable and to ensure that they are fully disclosed upfront in any sale transaction with a consumer so that the consequences of an early contract exit should be well understood.

We expressed concern that the introduction of regulated ETF caps (especially unduly low caps) would undo some of the competition advances that have been made in NSW to date. We specifically identified the threat to retailers' ability to offer discounts, placing upward pressure on prices, and restricting the range of competitive offers in the market if any such caps were set too low.

This is still our fundamental position. Nevertheless, the reality is that the NECF applying in NSW has been amended to require the setting of base ETF caps from 1 March 2014 and to exclude certain categories of customers from paying those caps. We therefore must start from that base position, just as the Tribunal has under the terms of reference for this review.

In the above context, we offer the following comments on the draft decision.

2. Comments on draft decision

2.1. General comment

In response to the Tribunal's issues paper, we provided detailed views in our submission and a substantial amount of confidential data. We are satisfied that the Tribunal has given fair and reasonable consideration to what we submitted. We believe that the Tribunal has done a comprehensive review and that its draft decision is consistent with the terms of reference it was given.

2.2. Specific comments

We agree with the Tribunal's decision that the relevant costs for inclusion in the base ETF cap should be estimated by considering the costs a retailer would avoid if the customer had not signed the contract.¹

We largely support the Tribunal's decision about the relevant costs for inclusion in calculating the base ETF cap. We understand the decision not to accept our position at this stage in respect of various "investments made on behalf of the customer", which we identified in our submission.² The draft decision indicates that the Tribunal is prepared to reconsider this issue and whether there are any costs in this category in its next two-yearly base ETF cap review.³

The assumption of a two year contract term or benefit term in the draft decision reflects the prevailing contractual practices in the NSW market. We therefore support that assumption.

Finally, it is our view that the proposed base ETF caps of \$130 in Year 1 and \$45 in Year 2 (GST exclusive) have been set at levels that should not adversely affect the diversity of product offers in the NSW electricity market. As a result, this should enable consumers to continue choosing the product that best suits them from a range of offers in the market.

If you would like more information about this submission, please contact me on (03) 9976 8363.

Yours sincerely



Mal Jones
Regulatory Manager

¹ IPART, *Early termination fees – Regulating the fees charged to small electricity customers in NSW – Draft Report*, October 2013, pp.17-20.

² EnergyAustralia, Submission to IPART on the early termination fees Issues Paper, 9 September 2013, pp.10-11.

³ IPART, p23.