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Submission:

Hello,

This submission was made earlier today, but I have since discovered 2 small typos. I am hoping that the version submitted earlier can be replaced with the version attached.

Many thanks and Merry Christmas,

Oliver



Charting the affordable course:

Submission to IPART's Issues Paper, Review of regulated retail prices and charges for electricity 2013-16

20 December 2012

Oliver Derum, Policy Officer

Energy + Water Consumers' Advocacy Program

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy + Water Consumers' Advocacy Program

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Retirement Villages Residents Association;
- the Physical Disability Council NSW; and
- Affiliated Residential Park Residents Association.

1. The current review

PIAC thanks the Independent Pricing and Regulatory Tribunal (IPART) for the opportunity to provide comment on its issues paper, *Review of regulated retail prices and charges for electricity 2013 to 2016* (the review). The current review takes place following a period of sustained and significant price increases in electricity for consumers in NSW. Average prices for residential consumers increased by 50% between 2009/10 and 2012/13, placing significant strain on household budgets and hampering access to this essential service for low-income and vulnerable consumers. These increases have created significant public pressure for action to place downward pressure on prices. IPART has been given Terms of Reference (ToR) from the NSW Government to regulate retail electricity prices for standard contracts for three years, until the end of 2015/16.

One of the most significant issues raised by IPART in the *Issues Paper* is the option of making standard contracts ‘opt in’.¹ This would mean that all customers currently on standard contracts (with regulated prices) are automatically placed on market contracts, with the option to return to a standard contract if they choose to do so. PIAC does not support this proposal and takes the view that the market itself should be able to perform the role of attracting customers onto market offers. Where market forces have not created this inducement, it is not appropriate for the NSW Government to act on behalf of retailers to place customers on market contracts.

However, this submission also includes comments on the possible transition to opt-in standard contracts, should the proposal receive NSW Government support. Specifically, PIAC believes that introducing such a measure would both pre-empt and undermine the process that is underway to assess the effectiveness of competition in NSW, the first step toward full price deregulation, as outlined in the Australian Energy Market Agreement (AEMA). Secondly, while IPART acknowledges that a consumer information campaign would need to accompany an opt-in initiative, PIAC argues that there must be stringent requirements surrounding the standards and effectiveness of such a campaign. Consumer education would need to be comprehensive and delivered independently.

In addition, under the ToR, IPART has been given some discretion over calculating energy purchase costs, which have previously been identified as a way to place downward pressure on retail prices.² The extent to which IPART should exercise this discretion is the other key issue on which PIAC will provide comment in this submission. PIAC believes strongly that the regulated retail price, which provides a safe and predictable option for residential consumers, should be set as low as possible.

¹ IPART, *Review of regulated retail prices and charges for electricity 2013 to 2016* (2012), 33.

² IPART, *Changes in regulated electricity retail prices from 1 July 2012: Electricity—Draft report* (2012), 86.

2. Opting in to price regulation

IPART has proposed adopting an ‘opt-in’ model for regulated retail electricity supply contracts, otherwise known as standard contracts.³ This would mean that customers who are currently on a standard contract would need to actively choose to remain on that contract. IPART’s view is that by forcing consumers to actively opt back in to their existing contract, they would be ‘encouraged to consider the options open to them before making this decision’.⁴ IPART’s stated objective in proposing an ‘opt-in’ model of price regulation is to promote competition and, therefore, improve the overall competitiveness of the NSW retail electricity market.⁵ IPART acknowledges that such a move would need to be accompanied by a ‘comprehensive customer information and awareness campaign’⁶, to be undertaken in concert by the NSW Government, IPART and retailers.

2.1 Timing of the introduction of opt-in standard contracts

PIAC believes that it should be incumbent on the market to entice customers off standard contracts through the availability of competitive offers. Standard retailers are supported to operate in the competitive market, through the inclusion of a customer acquisition and retention allowance as part of the regulated price of electricity.⁷ Through this allowance in the benchmark price, PIAC believes that companies should be able to use the competitive market to attract new customers. If this has not occurred, PIAC considers it inappropriate for the NSW Government to place all customers on market contracts.

Currently, there are approximately 1.5 million residential customers on standard contracts, around 50% of all retail residential consumers.⁸ Transferring any significant proportion of these customers on to market offers *en masse* has the potential to be a complicated and controversial measure. While this does not mean it is unachievable, PIAC believes that it may be unnecessary, especially given that full price deregulation in NSW may occur very soon thereafter.

The Australian Energy Market Commission (AEMC) recently commenced its examination of the effectiveness of retail competition in NSW. If that review finds that retail competition in NSW is effective, the AEMA maps the process for jurisdictions to follow to fully deregulate retail prices. Under the AEMA, States and Territories ‘agree to phase out the exercise of retail price regulation’, where two key conditions have been met.⁹ The first of these is that an AEMC review has found competition to be effective against criteria developed by the Standing Council on Energy and Resources (SCER). The second is that ‘social welfare and equity objectives will be met through clearly specified and transparently funded State and Territory community service obligations that do not materially impede competition’.¹⁰

³ IPART, above n 1, 33.

⁴ Ibid 34

⁵ Ibid 33

⁶ Ibid 34

⁷ Ibid 82

⁸ Ibid, 79; IPART, *Electricity retail businesses performance against customer service indicators in NSW* (2012), 35.

⁹ Council of Australian Governments, *Australian Energy Market Agreement* (2004), 28.

¹⁰ Ibid 29

PIAC questions the wisdom of decoupling deregulation and competition as they relate to each other under the AEMA. PIAC, therefore, recommends that an opt-in model for standard contracts should not be introduced while a process to assess the effectiveness of competition is underway, given that this process might lead to full price deregulation in due course.

If NSW proceeded to phase out all retail price regulation following the AEMC's report, the NSW retail market would undergo significant change. PIAC submits such a change would seem even more confusing to consumers if it closely followed the adoption of IPART's 'opt-in' model.

Recommendation 1

PIAC recommends that IPART not recommend the introduction of an 'opt-in' model for standard contracts to the NSW Government.

While Recommendation 1 represents PIAC's primary position, in the event that an opt-in model is to be pursued, PIAC makes the following comments. These do not represent an endorsement of the opt-in model.

2.2 Public information campaign

While IPART has acknowledged that a public information campaign would need to accompany opt-in standard contracts, PIAC emphasises that such a campaign must be adequate to meet the significant challenges it faces. As stated above, around 1.5 million customers in NSW are currently on standard contracts. To effectively make contact with all those consumers as necessary would require a very large and coordinated information campaign. Any change in the structure of the retail electricity market creates risk for consumers. When the Government-owned retailers were privatised, PIAC understands some energy marketers used consumer confusion around the sale as a basis for questionable marketing tactics. It is critical that policy makers learn from that process and not allow inadequate information to leave consumers exposed to this risk again. To this end, PIAC submits that the information campaign must include details of all fees and charges that are part of the market contracts to which customers will be transferred, as well as the term of the contract. PIAC is concerned that a situation not be allowed to occur where, for example, a consumer is transferred from a standard contract with regulated late fees, to a market contract with late fees that are much larger.

Given the number of consumers who would be affected by opt-in regulated contracts, PIAC suggests that the information campaign required could be modelled on that which accompanied the introduction of digital television. The campaign would need to make use of mainstream media such as television, radio and newspapers. However, PIAC also notes that simply using such media and bill 'inserts' would not be adequate. Many consumers, including those from non-English speaking backgrounds, do not engage with mainstream media.

Similarly, PIAC understands that consumers do not read bill inserts in large enough numbers for this method of communication to be effective. Communication would therefore need to take place through other channels, including through new media and community publications in specific languages. PIAC, therefore, supports IPART's suggestion that the timing of the introduction of

opt-in standard contracts be made dependent on achieving certain improvements in customer information and customer awareness.¹¹

Recommendation 2

Should opt-in standard contracts be supported by the NSW Government, PIAC recommends that opt-in standard contracts not be introduced until specific levels of consumer awareness about the initiative have been achieved and verified.

It is also extremely important that the information campaign be independent of retailers, who would be seen as having a vested interest in the proposed changes. Accordingly, PIAC recommends that the NSW Government be responsible for undertaking the public information campaign that accompanies the possible introduction of opt-in standard contracts. A campaign on the necessary scale will require significant funding, and should not proceed until the resources to deliver it have been identified and committed.

PIAC would support a comprehensive and independent public information campaign about the retail electricity market regardless of whether or not opt-in standard contracts are introduced.

Recommendation 3

Should opt-in standard contracts be supported by the NSW Government, PIAC recommends that the NSW Government be responsible for delivering an independent public information campaign to accompany the possible introduction of opt-in standard contracts.

2.3 Exit fees

Even the most effective information campaign will not reach every consumer. To avoid penalising consumers who are not aware of the need to opt back in to their standard offer, PIAC recommends that any consumers who are moved onto market contracts be given offers that do not impose any early exit fees. In addition, the market contract that such customers are placed on automatically should not impose a higher overall price than that under their previous standard contract. Imposing exit fees on such contracts would, in effect, punish consumers for not exercising their choice at the time of the transition by imposing penalties if they chose to do so before the end of the term of that market contract.

If large numbers of consumers take no action and are simply moved on to a default market contract, without meaningfully engaging in the market, then opt-in standard contracts will not have promoted increased competition in the retail energy market. Similarly, if the information campaign that preceded the introduction of the measure was not effective, many consumers would be left feeling that they were 'robbed' of their standard contract and left vulnerable to the fees and charges included in many market contracts. PIAC submits that such an outcome would seriously undermine acceptance of such a change to the NSW small retail electricity market.

Recommendation 4

Should opt-in standard contracts be supported by the NSW Government, PIAC recommends that customers on standard contracts who fail to opt back in to such a contract be placed on market

¹¹ IPART, above n 1, 34.

contracts without exit fees and which do not impose a higher overall price than the standard contract they previously had.

3. Energy purchase costs

Another key issue for this determination is the method used by IPART to determine energy purchase costs. Under the ToR for this review, IPART has discretion to use up to 25% market-based cost along with the long-run marginal cost (LRMC) that has been used in previous determinations when calculating the standard retailers' energy purchase cost allowance.¹² The ToR state that 'a key objective of changing the energy purchase cost methodology is to place downward pressure on regulated retail electricity prices'.¹³ Information presented by IPART at the public hearing, held as part of this determination process, showed that since 2010/11, LRMC has exceeded average market cost for energy by up to \$22 per megawatt hour. The 'headroom' created by this difference has more than doubled the retail margin on energy purchase costs between 2010/11 to 2012/13.¹⁴

IPART has requested input from stakeholders on how to decide whether it is in the long-term interests of consumers to include further 'headroom' above the price floor outlined in the ToR.¹⁵ In making this decision, IPART suggests that there is a trade-off between setting a price that allows standard retailers to recover their efficient costs and providing headroom above that level, in order to encourage new entrants into the retail market.¹⁶ Encouraging new entrants into the market will theoretically promote competition, 'ultimately lowering prices for those customers participating in the competitive market'.¹⁷

PIAC disagrees with the logic of increasing prices in order to increase competition and thereby place downward pressure on prices. There is no way of knowing how long that process will take to run its course, and therefore for how long consumers will be required to pay higher prices in order to allow the market to deliver lower prices. In addition, if new retailers are only entering the market as a result of generous retail margins, the question must be asked whether they will exit the market if these margins are reduced. By that logic, prices could be held artificially high to avoid a retailer of last resort event or undesired high market concentration amongst a small number of retailers. This course of action seems to place the interests of retailers above those of consumers. PIAC further notes that one of the costs included in the regulated retail price is a customer acquisition charge.

¹² Ibid 44.

¹³ Ibid 79.

¹⁴ IPART, *Regulated retail electricity and gas prices 2013 to 2016*, presentation to IPART public forum, 3 December 2012, Sydney. Slides available at <[www.ipart.nsw.gov.au/ Home/Industries/ Electricity/Webcast - Electricity and Gas Public Forum 3 Dec 2012](http://www.ipart.nsw.gov.au/Home/Industries/Electricity/Webcast_-_Electricity_and_Gas_Public_Forum_3_Dec_2012)> at 12 December 2012.

¹⁵ IPART, above n 1, 55.

¹⁶ Ibid 54.

¹⁷ Ibid.

PIAC acknowledges that having financially viable retailers is in the long-term interests of consumers. However, PIAC submits that paying prices above efficient costs for electricity is in neither the short-term nor long-term interests of consumers. While retailers carry a degree of risk on behalf of consumers, PIAC argues that this risk is minimised by the proposed annual review of energy purchase cost allowance.¹⁸ PIAC also notes that both Origin Energy and TRUenergy have generation assets¹⁹, meaning that those companies as a whole bear less risk from movements in the wholesale market price of electricity (or put another way, also stand to benefit from such movements). PIAC does not argue that retailers should not benefit from effectively managing their risks. However, there is a limit to the extent to which consumers can be expected to both fund retailers to carry risk and reward them for doing so effectively, without sharing any of the benefits. PIAC, therefore, contends that minimising headroom in the energy purchase cost allowance—and thereby placing downward pressure in prices—is more in the long-term interests of consumers than providing headroom as a method of promoting competition.

Recommendation 5

PIAC recommends that IPART set the energy purchase cost allowance using a weighting of LRMC and market-based costs that reflects the true cost of wholesale energy as closely as possible.

4. Setting regulated fees and charges

As part of this determination, IPART is examining regulated retail charges in the form of late payment fees, dishonoured bank cheque fees and security deposits. PIAC provides the following comments in relation to late payment fees and security deposits.

4.1 Late payment fees

PIAC does not support the continuation of late payment fees, particularly for households that have been disconnected due to an inability to pay. PIAC's 2009 report into the experience of utility disconnections in NSW, *Cut-Off II*, showed that 31% of those disconnected were required to pay a late payment fee.²⁰ The report also indicated that in the majority of cases, households faced forms of financial distress other than energy hardship.

PIAC's view is that late payment fees should be abolished for standard contracts. Though recent amendments to the Electricity Supply (General) Regulation (NSW) provide for late payment fees to be waived for hardship customers, PIAC has not seen sufficient evidence that hardship programs are growing at the same rate as disconnections in NSW. Without strong correlations between hardship program populations, disconnection rates and numbers of people seeking assistance to pay electricity bills, PIAC is unable to support the application of late payment fees, even with waivers.

Recommendation 6

PIAC recommends that the NSW Government abolish late payment fees for standard contracts.

¹⁸ Ibid 58.

¹⁹ NSW Auditor General, (2011), *Financial report: Volume 1*, Sydney: Audit Office of NSW, 53.

²⁰ Connell, J., Hill, W., *Cut Off II: The Experience of Utility Disconnections* (2009), report prepared for PIAC, Sydney.

4.2 Security deposits

PIAC recommends the abolition of compulsory security deposits for customers entering into a standard contract. Security deposits are a punitive measure used against households that have difficulty paying bills due to financial hardship. Households that are required to pay a security bond because of past late-payments and non-payment are likely to struggle to raise a security deposit. In order to pay the security deposit they may be forced into debt through the use of credit cards or through asking friends and family for money.

PIAC understands that some NSW retailers are not currently collecting security deposits. PIAC supports this as a responsible measure that assists in ensuring access to electricity for disadvantaged households. PIAC recommends that this be mandated for all retailers in NSW.

Recommendation 7

PIAC recommends that the NSW Government abolish security deposits for consumers on standard contracts and that this abolition is maintained through a derogation once NSW implements the National Energy Consumer Framework.

5. Providing information on the impact of IPART's decisions on customers

IPART has requested input from stakeholders about how the impact of this price determination is assessed.²¹ PIAC would like to see IPART produce an analysis that shows electricity bills as a percentage of household income after accommodation expenses are subtracted. PIAC anticipates that such an analysis would underscore the impact of electricity price rises on low-income consumer groups, who generally have lower rates of property ownership than exist amongst the general population.

Such an analysis could also illustrate the different impacts that price rises have, for example, on a pensioner who owns their own home versus one who pays rent. It could also identify emerging groups struggling to meet the costs of electricity, such as those households under mortgage stress.

Recommendation 8

PIAC recommends that IPART conduct an analysis of the impact of its price determination on household income after accommodation expenses.

6. Conclusion

The current review is being undertaken following a period of large and sustained increases in the cost of electricity for residential consumers. It is therefore extremely important that IPART use all tools at its disposal to keep price increases to a minimum over the coming determination period.

²¹ IPART, above n 1, 76.

PIAC does not support the option of forcing customers to opt in to the market contracts they are currently on. PIAC submits that it is the job of the market to entice customers away from standard contracts by providing more attractive offers. Where this does not occur, it is not appropriate for the NSW Government to perform this function for the market. In addition, the introduction of opt-in standard contracts would be out of step with the price deregulation process outlined in AEMA, which has been commenced in NSW. Were the NSW Government to support the introduction of opt-in standard contracts, PIAC submits that there must be stringent requirements surrounding the standards and effectiveness of the accompanying consumer information campaign.

PIAC also submits that the energy purchase cost allowance should be set using a weighting of LRMC and market-based cost that reflects the true cost to retailers as closely as possible, in order to fulfil the NSW Government's intent of placing downward pressure on electricity prices. PIAC believes that the long-term interests of consumers are best served by keeping prices low, rather than increasing electricity prices to entice more players into the retail market in the expectation that competition will then drive prices back down to the level at which they could have been originally set. While PIAC acknowledges that retailers face risks associated with energy purchase costs, PIAC believes these risks are reduced by the generation assets held by standard retailers, as well as the annual reassessment of energy purchase costs proposed by IPART. It is unreasonable for residential electricity consumers to both pay for the risk associated with energy purchase costs and also fund large profits for retailers when these risks are well managed.

Finally, PIAC would like to see IPART conduct an analysis of the impact of its price determination on household income after accommodation costs. If such analysis were possible, it is likely to illustrate the more severe impact that price rises have on low-income and vulnerable consumers.