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Independent Pricing and Regulatory Tribunal
PO Box Q290
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Thank you for the opportunity to comment on the issues paper *Review of Regulated Retail Tariffs and Charges for Electricity 2007-2010*.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON believes that consumer protection must remain the prime objective and the key criterion when the Tribunal considers the future of the NSW pricing and regulatory framework. To that end, we have limited our response to the issues paper to those matters that our experience suggests will have the potential to most impact customers, particularly those who are already in vulnerable circumstances.

For ease of reference we have adopted the same numbering as the issues paper.

If you would like to discuss this matter further, please contact me on 8218 5250, or Brendan French, Deputy Ombudsman, on 8218 52651.

Yours sincerely

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

Clare Petre
Energy & Water Ombudsman NSW



Energy & Water
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Independent Pricing and Regulatory Tribunal

Review of Regulated Retail Tariffs and
Charges for Electricity
2007-2010

Issues Paper

July 2006

Response by the

Energy & Water Ombudsman NSW

6 October 2006

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Introduction

The Energy & Water Ombudsman NSW (EWON) is pleased to respond to the issues paper *Review of Regulated Retail Tariffs and Charges for Electricity 2007-2010*.

Established in 1998, EWON is the approved independent dispute resolution mechanism for customers of electricity retailers in NSW. Our aim is to provide fair, equitable and independent investigation and resolution of customer complaints. We work with all the key stakeholders – providers, community, government, regulators – to improve the standard of service delivery for the benefit of NSW consumers.

This week EWON will receive its 50,000th customer complaint. While the types of customer complaints have changed over the years, it is fair to say that some have remained consistent, perhaps disappointingly so. One constant issue has been the affordability of energy for NSW customers. It is simply the case that many people in NSW are finding it increasingly difficult to afford their energy needs. While retailer and government assistance programs continue to assist many, there remains a significant number of people who for various reasons – language, age, disability, geography etc – cannot access the assistance they require and thus comprise the anonymous contingent of the energy poor. Any increase in the price of electricity, particularly one of the order contemplated by the issues paper, will have a considerable and a detrimental effect on these people, very possibly leading to a further rise in the already very high rate of disconnection from supply. To avoid this situation we consider it is very important that the effects of price rises are mitigated to the degree possible and that safety net provisions are strengthened to protect the most vulnerable.

ALEX'S STORY

We recently spoke with Alex who'd been disconnected from electricity for 28 months for \$757 (he had no gas connection either). We only found out about Alex's situation because his new Department of Housing contact officer decided to visit and, when he learned why Alex couldn't offer him a cup of tea, he called EWON. Alex hadn't told anyone about his problem because he was worried that he would be evicted for not paying the bill. His electricity company had said he would need to pay half the bill to be reconnected and the other half within a fortnight. During his two years without light and heat Alex had been able to have a warm bath every couple of months by paying a few dollars to his neighbour to use an extension cord to heat his electric frying pan and then plunging it into a cold water bath. Alex was reconnected after our discussions with the provider.

1. Terms of Reference

Participating in the market

The issues paper states that in determining regulated prices for the next period, the Tribunal must consider the NSW Government's policy aim of reducing customers' reliance on regulated prices as well as the likely effect of its determination on competition in the retail electricity market. Consequently, there is a clear nexus established between the objectives of regulating prices and encouraging competition.

The terms of reference suggest that the majority of NSW residential and some small business customers have chosen to remain on standard form customer supply contracts which include regulated retail tariffs and charges determined by the Tribunal. The clear implication is that this is due to the standard tariff being artificially low – and thus more attractive to customers – through non cost-reflectivity. The terms of reference suggest that for the benefit of competition to flow through all sectors, which will lead ideally to *lower* prices, prices will have to *rise* for those supplied under a regulated tariff. Though there may well be sound structural reasons for this, those who are already vulnerable – and these tend to be people who for various reasons choose not to, or are unable to, participate in a market contract – will be further exposed.

Rising prices and market confidence

Among the significant differences in the terms of reference for the 2007 review and those for the 2004 review are

- the requirement to take into account the phase out of the Electricity Tariff Equalisation Fund (ETEF) and, by extension, to acknowledge the likely volatility in retailer hedging, risk management and transaction costs
- the requirement to determine retail operating costs and margins based on a mass market new entrant rather than those of the standard retailers.

When these factors combine with an emphasis on total cost-reflectivity and renewable energy sources premiums, the inescapable conclusion is that retail customers are facing significant cost increases. Indeed the issues paper itself identifies that the changes to the terms of reference will almost certainly result in an increase in regulated retail tariffs. That such an increase may occur just as many NSW consumers are beginning to acclimate to the contestable retail market may lead to a reduced confidence in the overall process of the introduction of retail competition, rather than necessarily to stimulate market activity as may have been intended. This diminishment of confidence in the market has been felt in other Australian states and internationally where market liberalisation has been accompanied by significant retail price rises.¹

¹ See, for instance, Western Region Energy Action Group, [*Powering Poverty: a report on the impacts of the 2002-2003 electricity price rises on 12 low-income households in South Australia*](#), July 2004, p14ff

In Australian markets there is some evidence that the benefits of energy deregulation have not been evenly spread. A recent report outlines the experience of Victorian customers:

The price benefits associated with the reforms to the Victorian electricity industry, including the introduction of full retail competition, have not been equitably distributed across all consumer groups, with domestic consumers experiencing only a slight decrease in real electricity prices as compared to industrial consumers. In addition, data from each of the Productivity Commission, the Energy Supply Association of Australia and the Essential Services Commission of Victoria (ESC) indicates that where price savings to domestic consumers have been realised, the benefits have generally gone to higher volume business consumers and metropolitan consumers, in preference to low-volume and rural and regional consumers.²

These outcomes are not unexpected and have resonances for the current review. If confidence in the market is to be maintained and strengthened, and the most adverse outcomes for disadvantaged customers are to be avoided, then the Tribunal will need to 'include mechanisms to protect low-income consumers', as recently recommended by the NSW Minister for Energy.³

Protecting vulnerable consumers

The economic context in which this review is being conducted is not a promising one for customers vulnerable to price volatility. Recent changes to income support systems will see many disadvantaged groups, particularly single parents and those with a disability, migrated from pensions to government allowances. This will have a significant effect on incomes given that pensions are regularly increased against average weekly earnings while allowances appear not to have risen since 1996. In fact, the most recent *Poverty Lines* analysis indicates that a single adult receiving a government allowance of \$251.85 per week (inclusive of rent assistance) is \$78.92 below the poverty line and \$253.70 below the per capita household disposable income.⁴

A recent South Australian study of family poverty assessed the experiences of 500 families with young children in several areas of the most socially disadvantaged sectors of metropolitan Adelaide. 48% of families reported that their financial resources were insufficient for unexpected events while 25% reported that their financial resources were regularly inadequate for their needs.⁵ At the same time as relative poverty has intensified the Australian Council of Social Service (ACOSS)

² [Electricity Reform in Victoria: Outcomes for Consumers](#), Consumer Law Centre Victoria and the Centre for the Study of Privatisation & Public Accountability, Feb 2006, i

³ The Hon. Joe Tripodi, Minister for Energy: quoted in *Australian Financial Review* (20 Sept 2006).

⁴ [Poverty Lines: Australia \(March Quarter 2006\)](#), Melbourne Institute of Applied Economic and Social Research: Melbourne University, 19 July 2006, p3

⁵ Helen Cameron, [Poverty and Family Life under Welfare-to-Work: The Continuing Failure of Welfare Policy](#), University of South Australia Social Policy Research Group 2006, p4

published their *Australian Community Sector Survey 2006* which indicates that demand for the services of welfare and related bodies is far outstripping supply:

In 2004-5 respondent agencies provided services to 2,740,000 people, which is 220,000 people (or 9%) more than the 2,520,000 people who received a service in 2003-4. In 2004-5 respondent agencies turned away 171,366 people. This is 38,130 people (or 29%) more than the 133,236 people turned away in 2003-4. Of the 171,366 people turned away in 2004-5:

- *23% were not eligible for the service or needed a different service*
- *40% were eligible for the service and the service provided the person with only basic information and assistance*
- *37% were eligible for the service but were turned away from the service without assistance.*⁶

These figures suggest a reasonably bleak picture of services unable to cope with demand and increasing numbers of people living below the poverty line, unable to cope with daily expenses.

The impact of the Tribunal's determination on customers

The terms of reference for the review do not specifically require the Tribunal to consider the impact of price increases on customers but they nowhere preclude this. The NSW retail energy market appears to be operating effectively, with considerable marketing activity occurring. It is also our observation that customers from all sectors of the community appear to be availing themselves of market contracts. The churn rate in NSW may not yet have matched that of other states (eg South Australia) or overseas liberalised markets (eg the United Kingdom or the Republic of Ireland) but this is not necessarily a negative situation if NSW has managed to avoid the dramatic price shocks that occurred or are occurring in these jurisdictions. Such price impacts are felt most keenly by the vulnerable sectors of society and, in EWON's view, these are the customers who should be protected from the worst effects of such increases wherever possible. To this end, EWON would recommend to the Tribunal members that while the terms of reference for this review do not explicitly require them to have regard to the impact of their determination on customers or to take account of customers' ability 'to adjust to new prices' as previous reviews have done, such considerations are nevertheless inherent and implied in the task.

⁶ Australian Council of Social Service, [Australian Community Sector Survey 2006](#), p4

2. Policy Changes That Affect This Review

2.1 ETEF phase out

The NSW Government has announced that it will phase out the Electricity Tariff Equalisation Fund (ETEF) between September 2008 and June 2010. IPART therefore asks for comment on:

Whether, for the purposes of establishing cost reflective tariff levels, it should consider the phasing out of the ETEF over a period of time or assume that the ETEF immediately ceases.

How the phasing out of the ETEF will affect retailers' hedging, risk management and transactions costs over the course of the determination and whether these costs are different between a standard retailer and a mass market new entrant retailer.

How it should recognise the forecasting risks that retailers will face in the absence of the ETEF and whether these risks are different between a standard retailer and a mass market new entrant retailer.

EWON is not in a position to comment on the implications for price modelling of the removal of the ETEF other than to suggest to the Tribunal that a smooth price path that avoids price shock will be more likely to lessen the negative effect on customers.

2.2 The extent of competition

The Council of Australian Governments (COAG) recently endorsed the Ministerial Council on Energy (MCE) reform agenda, in particular, to phase out the regulation of retail prices where effective competition can be demonstrated. IPART therefore asks for comment on:

the extent of competition in the NSW retail electricity market.

the appropriate form of regulation given Governments' aim to phase out energy retail price regulation.

The criteria and indicators that will be used to determine the effectiveness of competition in NSW are yet to be published in their final form. Nevertheless, EWON's experience of customer complaints indicates that market contracts are being offered to, and accepted by, customers across a range of demographics. Clearly, many customers are taking advantage of contracts that provide them with price savings, and retailers are also taking the opportunity to tailor their offers to suit different customer circumstances. Nevertheless there are some identifiable problems with marketing activity and the terms of various contracts. In EWON's view there are significant indications that some customers who wish to remain on a standard form contract are feeling pressured into signing a market contract.

Increased complaints about energy marketing

During 2005-06 complaints to EWON relating to energy competition made up 20% of all issues raised, a substantial increase compared with 8% the previous year. Importantly, we saw a dramatic increase (305%) in complaints about energy marketing, with complaints highlighting many consumers' negative experience of the sales process with marketers. Many customers complained about marketers misleading or coercing them into signing a contract. Some customers complained that their account had been transferred to another retailer without their knowledge or permission. Others were shocked to find their account cancelled without their knowledge or consent, when another person (non account holder) in their household signed a contract.

EWON has been especially concerned about complaints involving marketing to older customers who did not understand what they were signing. In some cases, marketers falsely said they were from 'the government' or told customers their electricity supply was in jeopardy if they did not sign a contract. Some elderly customers told us they signed a contract because it was the only way they could get the door-to-door marketer to leave.

This practice of misleading or intimidating consumers is unacceptable and does not foster a positive, competitive energy market. It is clear to EWON that many vulnerable customers – eg those from a non English speaking background, the elderly, those with intellectual, physical and/ or other disability – are particularly susceptible to coercive marketing and, for the same reasons, are also ill-equipped to complain about their treatment or to cancel a contract they entered unwillingly.

EWON appreciates that NSW retailers are attempting to reduce the prevalence of such misleading and coercive marketing. It is also clear that, given the current churn rate, the great majority of marketing activity appears to be conducted appropriately. It remains the case, though, that there are groups of customer who are at a disadvantage in the context of contestability.

NATALIA'S STORY

Natalia, a 79 year old Polish pensioner suffers serious illness and does not speak English well. She was door knocked by two different energy companies on separate occasions, and ended up signing contracts with both companies. Her son rang EWON for help when the companies wanted to charge Natalia a termination fee to cancel the contracts. He explained that Natalia had felt pressured by one marketer and only signed to get him to leave, and she did not remember signing up with the second company. Natalia wanted to pay the fees and return to her original provider, but her son did not think she should have to pay any fees.

TERRY'S STORY

Terry works with a community agency that helps disadvantaged people living in public housing. He rang EWON when he found a number of his clients in one unit block had been approached by energy marketers. He said 7 out of 8 families had signed contracts which he found disturbing because at least two of the account holders suffered disabilities that would make it hard for them to make an informed decision. One customer had told Terry that the marketers said their current energy supplier was going out of business and if they wanted to stay connected, they would need to sign a contract. When the customer said he didn't want to sign, one marketer verbally abused him and stormed off.

Terry complained to EWON because he felt the residents had been targeted as a group. He was concerned that most of them did not really understand what was being offered and the fine print was so small it would be difficult for someone with literacy issues to read.

EWON discussed Terry's complaint with the retailer who acknowledged there had been a breach of the Marketing Code and that this would be reported to the regulator. The contracts were cancelled.

Geography

It is clear that despite an increase in marketing activity across NSW, competitive contracts are not available to all consumers and that many retailers limit the geographic areas where they are prepared to offer contracts. A small number of customers have complained about this to EWON.

ANTHONY'S STORY

Anthony received an offer of a contract in the mail at his home as part of an exclusive promotion to members of an association to which he belongs. When he responded, the offer was withdrawn because he lived in an area in which the retailer was not marketing. The customer felt strongly that having been offered this contract without a geographical qualification there was an obligation on the part of the retailer to honour its terms.

While it has been argued that an increase in the regulated tariff will encourage marketing in such areas, EWON's experience would suggest that there are few

customers who are unable to sign a market contract if they wish (particularly one offered by their standard supplier). To raise the standard tariff in order to encourage greater market offerings will not necessarily work as intended everywhere and/ or evenly, and will be likely to disadvantage many of those who, for instance, simply do not wish to sign to a negotiated contract (eg tenants).

Contract terms

It is clear that for many consumers certain contract terms act as a barrier to accessing the market. The requirement in many contracts for direct debit as a payment form, with a financial penalty imposed for other payment forms, acts as a significant barrier to many consumers, especially elderly customers who may prefer to pay through other means (eg cash paid at a local Post Office). A financial penalty for forms of payment other than direct debit also significantly erodes any saving that the customer would make through a negotiated contract.

A further group who have trouble in accessing the competitive market are tenants. Most contracts available are for a fixed term (often three years) and are not portable. Given that the average length of a standard residential lease is 12 months, a three year contract is not the most suitable offer. It is arguable that the market will ultimately accommodate customers who seek certain versatility in contract terms by developing options to suit them. Nevertheless, EWON's experience of customer complaints suggests that this has not yet occurred and that there is at least an equivalent likelihood that the range of options currently available through a standard form contract will not be matched by market contracts. It is important to note that in order to keep costs down, retailers may understandably seek both to eliminate high transaction costs (eg payment in person, payment at a post office, payment via Centrepay) and maintain contract terms that ensure customers remain 'sticky' (eg through fixed term contracts and termination fees for early cancellation). The reductions in payment flexibility combined with potentially restrictive contract terms will most likely have a particular impact on vulnerable customers.

Finally, the absence of comparative information readily available to allow customers to make informed decisions about market offerings is in stark contrast to the information available to Victorian and South Australian consumers. EWON believes (in agreement with the Move-In / Move-Out working group chaired by IPART) that there would be specific value in having such comparative information available on a readily accessible website where various market offerings can be presented in a simple and easily understood manner, thus encouraging informed choice.

Form of regulation

Signing up to an energy contract is still new to many customers so we would expect complaints from people who are unsure of the process or confused about their responsibilities. As noted above, though, this year there was a significant increase in complaints from customers who said they had been misled, pressured or intimidated by marketers. Many of these customers have made it clear to EWON that they wish to retain the flexibility that is currently offered under the terms of a standard form contract. To address the concerns of such customers, it appears that any reduction in pricing regulation would require assurances that the flexibilities that exist in standard contracts are also available in some way in market contracts.

2.3 Time of use meters and demand management

The Council of Australian Governments (COAG) has agreed to the progressive national roll out of ‘smart’ electricity meters from 2007 to allow the introduction of time-of-day pricing. Further the terms of reference require the Tribunal to consider the impact of its determination on demand management. IPART therefore asks for comment on:

What problems have arisen during the current determination as a result of network roll out of time-of-use meters.

How the new determination could be used to facilitate the transition to time-of-use tariffs.

How the Tribunal should consider the impact of its determination on demand management.

At its 8th Network Information Forum held on 11 May 2006 EnergyAustralia indicated that of 145,099 smart (type 5) meters in the National Electricity Market 101,000 (70%) had been installed by EnergyAustralia in NSW. Given this high level of advanced metering in the major metropolitan franchise in NSW, it is important to note that EWON has only received a limited number of complaints arising from the roll out. Nevertheless, the problems identified by customers are pertinent to the issues raised by the review.

Information provision

Some customers have raised concerns about the lack of information provided by the model or programming of the meter. Given that the stated purpose of the roll-out is to encourage and support changes in consumption behaviour, EWON considers that an essential aspect of time of use meters is increased information provision to customers. An integral aspect of this information is for a customer to be able to identify usage in the different time of use brackets. Without this functionality, it is clear that the ability for advanced meters to assist customers in managing their demand is severely limited.

CARLOS' STORY

Carlos had a time of use meter for approximately 15 years before its replacement in April 2003 with a new Type 5 meter. Unlike his former meter, the current Type 5 meter does not allow him to access the cumulative data in the time splits of peak/off-peak/shoulder, for each of which he is charged a differential tariff. Instead, Carlos can only access the cumulative aggregated consumption of all three time bands as well as his off-peak hot water usage. He told EWON that the meter should have been programmed with at least the same functionality he enjoyed with his previous meter and that he is now unable to consider his pattern of consumption in the different time/ price bands or verify the accuracy of his billing.

Time of use pricing to impact low-users

EnergyAustralia's analysis of the cost savings/impacts for customers resulting from its time of use metering and pricing indicates that the higher the consumption the greater the relative price advantage. It is clear that there are demonstrable advantages for many consumers in being able to migrate their consumption across time bands and thus, potentially, reduce their bills. Nevertheless, it is also the case that the bulk of customers who are suffering a price disadvantage because of the introduction of time of use metering/ pricing are at the lower end of the consumption spectrum. Such customers may have less discretion to move their consumption across time bands, and they may soon be likely to pay more for the electricity they consume under the *current* pricing determination, particularly in peak periods. If such small-use customers – in EWON's experience, often single person households on low, fixed incomes – will *also* experience a significant price rise following the 2007-10 retail determination, many will feel the price shock acutely.

Smart meters and retail competition

A further issue concerning the roll out of time of use meters that has been raised with EWON is the difficulty some retailers face in honouring the terms of a negotiated contract once advanced metering has been installed at the premises. It appears that some retailers do not have the necessary billing infrastructure to cope with the data generated by the time of use meter. In some circumstances retailers have had to 'return' a customer to the standard supplier as a consequence. This has meant that customers who have received a time of use meter have found themselves excluded from the competitive market and are left with no choice as to their retailer.

Demand management

EWON agrees with Country Energy's conclusion that:

Retailers have a unique and direct relationship with regulated customers, and therefore are best placed to engage customers in programs to encourage demand management and energy efficiency outcomes.⁷

It is of particular importance that education programs associated with a developing emphasis on demand management have a focus on the needs of low income consumers and address the particular issues associated with behaviour change in a context of limited resources. It is pleasing to note that almost all of the retailers' hardship assistance programs incorporate some elements of demand management education in their range of services. This is a promising start but with the further expansion of time of use metering and pricing, and the anticipated tariff increases foreshadowed by the issues paper, it will be important that retailers are ready to expand their activities in this area, specifically in order to address the needs of low-

⁷ Country Energy, [Submission to IPART Review of Electricity Regulated Retail Tariffs 2007 – 2010](#), p8

income consumers. Clearly, it is preferable that such steps are taken proactively – *before* consumers require the assistance of the various hardship assistance programs.

EWON believes that there are several programs currently in place that could be expanded to assist low-income customers manage their consumption. A small number of NSW retailers currently offer a phone- or home-based energy audit to assist customers to learn more about their usage patterns and appliances. This is a very positive step but will be of limited use if the result is an identification of energy inefficient heating and white goods but no information/ programs to replace these items. Consequently, EWON considers that a much stronger No Interest Loans Scheme (NILS) is an essential part of a comprehensive approach to demand management. Strong and consistent support from energy retailers to expand and maintain a state-wide NILS program accessible to all in need would be a significant step forward. In this context EWON notes the strong commitment given by Sydney Water to NILS in the context of the recent IPART metropolitan water pricing determination.

In many countries including New Zealand, the United Kingdom and the United States of America, there are various services and grants that provide support and assistance in ensuring accommodation is energy efficient, particularly for those who are renting. While there have been a number of pilot programs in NSW it would appear that now is the appropriate time to consider a more comprehensive means to educate and empower people to make energy-efficient choices across a range of their consumer decision-making. Aside from the community-wide benefits of such an approach – including, of course, supply-side savings – there is specific and demonstrable advantage for vulnerable customers in the context of retail price rises.

3. Form of Regulation and Price Constraints

3.1. Form of regulation

The Tribunal seeks comment from stakeholders on the regulatory approach that best meets the objectives for the review, the pros and cons of the options, and whether there are additional broad options or variations within the options that the Tribunal should consider.

In our responses to the issues paper EWON has based our observations on the complaints raised with us by NSW customers and from our independent investigations of those complaints. Consequently, we have limited our comment regarding the intricacies of the form of regulation which the Tribunal adopts for this determination to the following.

Evolution rather than revolution

Over recent determinations, the Tribunal has sought a regulatory model that encourages retailers to move to cost reflective tariffs while at the same time reducing the likelihood of price shocks for customers. These have been successful determinations precisely because a balance was struck between competing interests: market development and consumer protection. Although NSW standard retailers have in some areas not yet been able to move their tariffs to be fully cost reflective, significant improvements have nevertheless occurred. It has also been possible to rationalise many of the obsolete tariffs, a process that is ongoing. (While Country Energy still has a multiplicity of regulated tariffs, the number of customers served by these is quite small.)

Crucially, while these developments have all occurred over a period of increasing prices for customers, the impact has been to some degree mitigated by introducing the price rises over extended periods. This has meant that NSW, unlike several other Australian and international jurisdictions at a similar stage of market development, has managed to avoid the price shocks that have beset other markets. This approach – perhaps broadly defined as evolutionary rather than revolutionary – has been developed and sustained over several years and EWON considers it would be disadvantageous for it to be altered now.

In their submissions, the retailers have emphasised the limitations on cost reflectivity imposed by the side constraints of the current determination. They have argued that the side constraints have disallowed them to recover costs as effectively as they otherwise might have done. Yet it remains the case that each of the retailers has achieved very significant cost recovery and return for the shareholder/s. Perhaps the side constraints have not allowed the retailers to move to immediate cost reflectivity but their primary purpose – to protect consumers from significant price shock while allowing prices to increase over time – has been successfully met.

One of the commercial drivers for the current pricing review appears to be full cost reflectivity by the end of the 2010 determination. This goal does not appear to be significantly different in several ways from that of previous determinations, other than that it is time-limited. EWON hopes that the important work achieved by previous determinations to increase prices by affordable increments at both the macro- and micro-levels is not undermined by the constraints imposed by this deadline.

Final retail determination?

EWON recognises the complexity of establishing a form of price regulation in the context of a move to full cost reflectivity with the added issue of a longer-term commitment by the MCE to aim towards the removal of retail price regulation. Given that this may be the last determination of regulated electricity prices for NSW customers, it appears there may be economic as well as social value in maintaining the current regulatory model (including price constraints at the level of an individual customer bill). Country Energy, for instance, has noted that

significant switching costs would be incurred if a new model (such as the WAPC approach) were to be instituted at this late stage. In addition, a WAPC imposes higher monitoring and compliance costs on the regulator and retailers.⁸

The avoidance of significantly increased costs associated with implementing the final form of regulation should be an important consideration in choosing what is likely to be a time-limited regulatory regime.

3.1.3 Opt-in regulated tariff

The Tribunal specifically asked for comment on the following questions concerning the possibility of establishing a limited number of opt-in regulated tariffs:

Whether it is appropriate to apply a regulatory approach that requires customers to ‘choose’ to be supplied on a regulated tariff and the implications of doing this.
What measures could be taken to resolve the customer protection issues associated with such an approach, and who should take responsibility for taking them.
Whether customers could continue to be supplied on a standard form contract if they do not choose to be supplied on the new regulated tariff.

The automatic rendering of all current retail tariffs as ‘unregulated’ via the introduction of an ‘opt-in regulated tariff’ presupposes a market climate ready for (more or less) complete deregulation. As indicated by the sharp increase in complaints to EWON about coercive, misleading and fraudulent marketing over the last year, it is EWON’s view that the NSW market (including its legislative/regulatory underpinning and compliance with the *Marketing Code*) may not be ready for such a development.

⁸ Country Energy, [Submission to IPART Review of Electricity Regulated Retail Tariffs 2007 – 2010](#), p11

In what is very possibly a period of evolution from a regulated to a deregulated pricing environment, the ‘opt-in’ model appears more akin to a final outcome than a transitional model. The present approach of a default standard form contract, with an emphasis on increasing cost reflectivity over the next three years, would appear to be the appropriate option at this point in time, particularly as it is supported by a regime of consumer protection laws and service standards already in place. If, as appears to be the prevailing view, regulated pricing is to be phased out over the next period, it may well be that the ‘opt-in’ option may ultimately be a form of protection available to vulnerable customers, among others. In this context, EWON notes with interest EnergyAustralia’s submission which raises the possibility of developing an opt-in qualification-based tariff for disadvantaged customers. EWON would like to express our willingness to work further with retailers and IPART to explore this as a response to the potentially adverse impact on disadvantaged and vulnerable customers of full retail price deregulation combined with increasing network and environmental costs.

3.2 Price constraints

Under the present determination, the Tribunal has sought to balance the move to cost reflective tariffs with assurances that customers are protected from unacceptable price increases. For the 2007 to 2010 determination:

The Tribunal seeks views on whether and at what level it should set price limits, how price limits interact with the form of regulation, and whether it is appropriate to remove price limits on obsolete tariffs.

As noted above, the retailers have stated that over the period of the current determination price constraints (particularly on individual bills) have resulted in limits on achieving the target (N+R) tariffs. If in this determination price constraints are lifted on either individual bills or individual tariffs then consideration will need to be given to ensuring the least possible price shock, and to having in place appropriate and viable support mechanisms for customers who are particularly adversely affected. We note with interest that each of the current major retailers have emphasised their strong commitment to hardship assistance programs as an essential aspect of their customer service in the journey to retail price deregulation.

The issues paper suggests that limitations imposed at the level of customers’ bills is ‘relatively simple to administer’. On this basis, and given the protections that it affords to customers, it appears sensible that such limitations are maintained. If the Tribunal considers that these limitations are problematic for the purposes of achieving cost reflectivity (though it is worth noting the degree of success that has been managed in this area over recent determinations with such limitations in place), then there may well be advantage in consideration being given to ‘whether different limits should be applied to different customer classes’ as suggested in the issues paper. The retailers have informed EWON that they already have systems in place to identify customers in (or potentially in) hardship – eg those who pay/ part-pay with Energy Accounts Payment Assistance, who build-up arrears over two or more bills, who consistently pay late, who regularly request an extension of time to pay, who pay via Centrepay, or receive a pensioner/veteran rebate. We understand that such indicators of hardship are used to determine if a customer should be offered membership of a retailer’s hardship assistance program and for other purposes (eg. to determine if a

late payment fee may be levied). There appears to be little reason why the same criteria could not be used to determine if a customer's account should qualify for the application of side constraints at the customer level.

4. Costs to be Recovered

The Tribunal seeks responses to how it should consider cost in determining regulated tariffs:

The Tribunal seeks views on the appropriate level for each of the relevant costs and on how the Tribunal should directly or indirectly consider that cost in determining regulated tariffs.

EWON is not in a position to comment in detail on the Tribunal's cost recovery considerations in determining regulated tariffs. We note that the Tribunal intends to commission advice from a consultant on an appropriate allowance for a new entrant retail margin and that there will be further opportunity for stakeholders to respond at that time.

4.3 and 4.4 Mass market new entrant - retail margin / operating costs

EWON has some concern that the terms of reference for the review require the Tribunal to focus on the costs for external parties to enter the NSW market (ie mass market new entrants), with a clear implication that the current retail margin will thus rise significantly for 2007-10. Our concerns can be summarised as follows:

1. While there may be some new entities seeking a licence to retail in NSW, it is demonstrably the case that the majority of new entrants will be large retailers from other states. Such companies – a number of which are larger operations than the three standard NSW suppliers – will already have existing infrastructure in place to support their marketing efforts and, as such, will not incur 'start-up' costs that might otherwise be accounted for by the Tribunal among the costs for mass market entrants (eg they already possess established call centres, lower hedging risks). In short, such retailers already have their infrastructure in place and so this should not be a factor in consideration of the retail margin.
2. The retail margin is to be determined by the Tribunal *for the standard suppliers* – not for those offering market contracts. While the intention may well be to make the NSW market more attractive to retailers from other jurisdictions by focusing on *their* costs rather than the standard suppliers' costs, there is a distinct possibility that precisely the opposite may occur. The standard suppliers are very well positioned to take particular advantage of any rise in the retail margin by signing up their own franchise customers, and those of the other two network providers, to market contracts. It could well be the case, then, that a rise in the retail margin, designed to encourage further competitive entrants, may well entrench incumbent advantage with an added detriment to those on regulated tariffs who will be paying more as a consequence.

3. A rise in the retail margin, as foreshadowed by the issues paper, would also be accompanied by other price increases (EETF phase out, renewable energy premiums, national market costs). Combined, these factors create a pricing context with significant potential for increasing the vulnerability of certain classes of customer, particularly those in financial difficulty.

4.9 Optional green power component

The Tribunal seeks comment regarding the Government's requirement (under the *NSW Greenhouse Plan*) that retailers offer a 10% Green Power component to all new or moving customers:

The Tribunal seeks comment on the most appropriate way to account for the requirement of energy retailers to offer a 10 per cent Green Power component to all new (or Moving) residential tariffs.

We commend the NSW Government for taking the initiative to attempt to encourage investment in renewable energy sources and thus reduce greenhouse gas emissions. However, based on our experience as the primary independent consumer dispute resolution mechanism for the industry, we believe there are some important issues to address, especially to protect vulnerable consumers.⁹

We note that the issues paper quotes the *NSW Greenhouse Plan* to the effect that the Green Power initiative 'would replace the current opt-in scheme with an opt-out scheme. All customers would be offered 10% Green Power, with the option to refuse, accept, increase or decrease the Green Power component'. The recent draft *Electricity Supply (General) Amendment (Renewable Energy Sources) Regulation 2006* has chosen instead a variant of an opt-in model for customers supplied via a regulated tariff. EWON supports an opt-in approach, particularly as we consider an opt-out model would specifically disadvantage those least able to exercise their opt-out option (eg those from non English speaking background or who have limited literacy). This is particularly important in our view because although the *Preliminary Issues Paper* on the Green Power proposal issued by the Department of Energy, Utilities and Sustainability indicated that special consideration would be given to customers of a non-English speaking background as well as those receiving financial assistance or rebates, it appears that the draft regulation has not prescribed any requirement on suppliers to give such special consideration to these customers.

EWON considers that where the Green Power premium is to be offered in tandem with a standard form contract and regulated tariff, the Tribunal should regulate the premium. This would assist, to some degree, in ensuring that the effects for those vulnerable to price increases would be controlled.

Clause 45E(3) of the draft regulation prescribes that if a supplier makes offers both under standard and market contracts, the renewable energy sources [ie Green Power] component only needs to be included in one of the offers. We do not object to any attempt to simplify the matter for customers, however we are concerned that if a customer is offered a standard contract with a green tariff component, and a

⁹ For EWON's submissions on this subject see ewon.com.au

negotiated contract without the green tariff component, the customer may not be aware that they could accept the standard contract *without* the green tariff component. This may lead to complaints from customers that they were misled, inadvertently or otherwise, by suppliers. We have suggested that this could be addressed by either ensuring that the customer is aware of the option to choose the standard contract *without the green power tariff*, or by requiring that all contracts offers – even when made simultaneously – are to include the renewable energy sources offer.

If the provisions of the Regulation stand as drafted and a supplier is only required to offer the green tariff component on either the standard *or* the negotiated contract, we consider that it is highly likely that the standard retailers will elect to place the green tariff on the standard form contract – thus making the negotiated contract offer more appealing. (This is entirely understandable as retailers are seeking the financial security that comes from customers committing to term-based market contracts.) An outcome of this approach would be that customers would likely sign market contracts *without the green tariff* because they appear to be less expensive than the regulated tariff rate of the standard form contract *with the green tariff*. This would appear to be an outcome at odds with the intent of the Regulation. Further, if a customer is specifically seeking a Green Power option, it is not unlikely that they would agree to a standard form contract in preference to a market contract in order to seek the green tariff – an outcome at odds with the NSW Government’s aim of reducing customer reliance on regulated prices.

5. Miscellaneous Charges

5.1 Security deposit

EWON believes that there should be no rise in the amount held by retailers for security. The current amount of the security deposit, though arrived at differently from the Victorian equivalent, is very similar in dollar terms to both Victoria and South Australia and thus has the advantage of consistency of application.

EWON would be concerned by any proposal to extend the right to request a security deposit into the period covered by the supply agreement. We do not support the proposal by Integral Energy to add the cost of a security deposit to what is already owed as an “alternative to disconnection” and feel that this would not be viable for many customers. We consider that the requirement to pay a security deposit on an account already in arrears would particularly disadvantage those in the midst of financial difficulty and recommend that such customers be referred instead to the retailers’ hardship assistance programs.

The current determination places the onus on a customer to demonstrate a satisfactory credit history. EWON recommends that the Tribunal may wish to consider the value of the Victorian approach which requires the retailer to establish that the customer demonstrates an ‘unsatisfactory credit rating’ (in the context of the guidelines established by the Essential Services Commission).

EWON has received complaints regarding the current determination’s requirement that the security deposit need not be refunded to customers unless they have demonstrated ‘on-time payment for one year’. The occasional reminder notice (two in two years) can result in the retention of the security deposit for three years. The underlying intention of the requirement for a security deposit is to protect retailers from bill default. An occasional reminder notice is not an indicator of intention to default. EWON would recommend that consideration be given to refunding the security deposit following four on-time payments, rather than four *consecutive* on-time payments as occurs at present.

Finally, EWON notes that some retailers do not recognise Centrepay as a form of ‘direct debit’ instalment plan for the purposes of exemption from payment of the security deposit. This is anomalous and places an unfair burden on those in receipt of government benefits.

GINA’S STORY

Gina had received a reminder notice to pay \$260 which included a security deposit and a small amount for consumption. Gina had already set up a Centrepay arrangement for \$30 per fortnight to cover her usage but when she called her retailer she was told that she needed to pay the full account at a rate of \$100 a week until the arrears were paid or face disconnection.

HONAMI'S STORY

Honami had arrears of \$244.76. She requested an arrangement in which she could pay half the arrears up-front and the other half in a fortnight. Despite the fact she receives income support from Centrelink she was told that the second payment had to be made in a week's time. Honami was unable to meet this request as her Centrelink benefit is paid fortnightly.

5.2 Late payment fee

Electricity retailers have informed EWON that the rationale for charging a late payment fee is to encourage those who can pay on time to do so but not to disadvantage those who cannot. We understand this argument but note from our experience that in many instances the latter are among those most impacted by the fee.

In EWON's view, before the Tribunal could consider raising the late payment fee it would need to be satisfied that:

1. *The amount charged must be a compensable expense.* The annual revenue from late payment fees alone (at least for two retailers) amounts to millions of dollars a year. Does this revenue equate to demonstrable costs incurred in providing credit for late-paying customers?
2. *There should be compelling evidence that late fees actually encourage on-time payment.* It is quite possible that many people who do not pay on time may well not be compelled to pay on time even by a higher fee and will continue to pay at their own convenience. There may be value in considering, rather, incentives that may be offered to customers to pay on time, rather than to penalise those who do not (Aurora, for instance, offers a small discount to those who elect to pay via direct debit, thus encouraging on-time payment).
3. *Those who are genuinely unable to pay on-time must be exempted from the fee.* EWON considers there is value in ensuring that exemptions are in place for all customers who receive acknowledged rebates (pensioner, life-support, etc). We also consider there is value in incorporating recipients of a Commonwealth Health Care Card into the exemption list (as applies in Tasmania, for instance) – thus including Newstart recipients, students and those in receipt of parenting payments. These are significant categories of potential disadvantage.
4. *Retailers must have in place back-end systems to ensure that the exemptions currently in place (and any further exemptions arising from this review) are working.* EWON notes that one major NSW retailer's website indicates that late fees are not imposed on those receiving a pensioner rebate yet our experience of customer complaints suggests otherwise. EWON not uncommonly receives contact from customers who have been charged a late payment fee even though they are exempt under the terms of the current determination (eg they have paid with Energy Accounts Payment Assistance

vouchers). In our experience customers are unaware that they should not be charged a late payment fee in such circumstances. EWON would recommend that the Tribunal only allows for late payment fees to be levied when IPART is satisfied that exempt customers will not – and cannot – be charged. This is an observation we have made in previous pricing reviews:

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. 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.”¹⁰

AHMAD'S STORY

Ahmad and his family were disconnected for \$230.80. Ahmad, who had been unable to negotiate an extension or a payment plan with his provider, had called EWON for help in getting the power back on. When we looked at his account we noticed that his last payment before the disconnection had been with \$90 worth of Energy Accounts Payment Assistance vouchers but he had nevertheless been charged a late payment fee of \$5.45 (including GST).

5. *Retailers should be required to waive the late payment fee when, in their reasonable analysis, the customer is in financial difficulty. We feel that a customer should not be required to pay a late payment fee when, for instance, the customer regularly pays by instalment or seeks payment extension. The reality of hardship is that most customers do not wish to self-identify. The retailer is well situated to recognise the indicators of disadvantage and financial vulnerability and, in such circumstances, should not be charging the fee.*

SCOTT'S STORY

Judy called EWON on behalf of her cousin Scott who had been living without hot water since his gas was disconnected 8 months ago. Judy said that Scott was Aboriginal and was permanently in a wheelchair. He

¹⁰ EWON response to IPART: [Review of Gas and Electricity Regulated Retail Tariffs Issues Paper February 2004](#), p6

wasn't comfortable talking on the phone so she was calling for him. She said he couldn't go on without hot water – he had been using cold water but winter was approaching. Scott had made part payments towards his bill and only had \$20 arrears outstanding. His bills were usually less than \$100 but having been disconnected 4 times in the past 2 years his debt was mostly made up of reconnection fees. The disconnections happened when he was in and out of hospital and couldn't get to pay his bills.

EWON contacted the company who said they would reconnect and waive the fee if Scott set-up a Centrepay arrangement. We explained to Judy that Centrepay meant there were regular payments going towards his bills. Scott agreed and Judy helped him set up Centrepay to cover future accounts and avoid disconnection.

5.3 Dishonoured bank cheque fee

The current determination allows retailers to charge twice the regular GST-exclusive fee applied by the bank or financial institution for a dishonoured cheque. This is clearly not a 'pass through' fee and we presume the doubling of the charge is designed to acknowledge administrative costs accrued by the electricity retailer. Nevertheless, it appears that in other jurisdictions (eg South Australia) only the fee itself may be charged.

We note that some retailers desire to have this area expanded to cover credit card fees and direct debit failures but that the Tribunal has sought comment only in relation to the dishonoured bank cheque fee. We also note that there has been some suggestion that retailers should be entitled to recover merchant fees from customers who pay their accounts using credit cards. We are concerned that this proposal may be contrary to the regulation that requires retailers to accept certain forms of payment from customers without imposing any charge for using any of the listed forms of payment.¹¹ 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 that (at least for customers on regulated tariffs) the choice between these alternatives should not be impacted by the imposition of fees. Further, if the Tribunal ultimately considers a proposal to charge for direct debit failures, there would be particular advantage in clearly identifying the quantifiable costs to retailers. This is particularly important because the customer will already have been charged a considerable fee by their bank or financial institution and a further (and, potentially, higher) fee from the retailer may well have a significant impact on already disadvantaged customers.

¹¹ Clause 30 of the [Electricity Supply \(General\) Regulation 2001](#)

6. Customer Impacts

The terms of reference for the Tribunal's review are such as to emphasise market considerations rather than the needs of the consumers who will be most impacted by the determination. EWON believes that it is unfortunate that the terms of reference focus attention on improving the competitiveness of the market but do not place equivalent emphasis on servicing the needs of the most vulnerable members of our community. For this reason, we are including a section in this submission that references the needs of these people in particular.

Electricity is an essential service and, as such, for many or even most consumers much of their usage will be non-discretionary. Consequently, price increases in electricity impact whole communities and lead to specific disadvantage and sanctions: disconnection (with its health and safety risks), credit listing, utility poverty/ rationing, etc. Needless to say, prices will from time to time need to increase nonetheless. The challenge is to introduce such increases in a way that will neither indenture pre-existing disadvantage nor 'tip over' into this category those who are currently managing – or barely managing – their bills.

The rate of unrequested disconnection for both electricity and gas in NSW remains alarmingly high. It is important to note that these rates appear not to have fallen significantly despite the introduction of hardship assistance programs for all major energy retailers in NSW. For many years EWON has advocated the value of these programs – and will continue to do so – but it is concerning that their ability to impact disconnection rates appears to date to have been, at least for some retailers, reasonably minimal, and that a number of retailers have already signaled an inability to extend these programs further. We understand that the Department of Energy, Utilities and Sustainability intends to introduce regulatory changes that may require retailers to consider further options before disconnecting supply but we are yet to see the detail of this proposal. Such strategies are imperative, not least because intervention following disconnection of supply is highly resource-intensive for all concerned and has limited economic value as a debt recovery tool.

It is in this context – of very high disconnection rates, customer hardship programs already highly subscribed, and increasing utility poverty – that the Tribunal will be considering terms of reference that will in all likelihood lead to significant rises in regulated tariffs.

Working together to keep essential services within reach

MICHAEL'S STORY

Michael is a disability pensioner with three children. He received a disconnection notice for unpaid bills of \$1,110. Part of the arrears included charges of \$770 for one bill, which Michael thought was very high. He rang his energy company and arranged for someone to come and, at his cost, inspect his meter. An inspector

visited his house, but found nothing wrong with the meter.

The date was nearing for Michael to be disconnected and he rang the company to see if he could have more time to pay. He was told that unless he paid \$440 towards the bill he would be disconnected.

Michael explained to the call centre that he was supporting three children and was in financial hardship. He was told by the operator: "I'll give you the number of some welfare agencies, because we're not one."

Michael was distressed and called EWON for help. While our investigation revealed he had been charged correctly, we negotiated a realistic payment plan and the company organised an energy audit for Michael and his family.

While it is clearly the case that retailers are not, and cannot be expected to be, the welfare providers of last resort, they are well situated to identify and address many of the indicators of disadvantage and to educate customers about managing their demand. There is also an obligation on government to provide sufficient support to social programs to ensure vulnerable customers are protected, and to provide legislative leadership to create a compliance regime to ensure industry best practice. Community welfare organisations have a key role in distributing EAPA and other forms of assistance, administering the NILS scheme, and providing financial counselling. There is an obligation on EWON to assist customers to resolve their disputes with retailers in a timely, efficient and effective way and to continue to raise with key stakeholders the nature of the issues raised by customers, particularly those in vulnerable circumstances. Finally, there are the specific responsibilities of regulators to ensure that services are provided to consumers in the context of a healthy market that respects the differential capacities of customers and provides a degree of protection for those least able to protect themselves from the detrimental effects of price volatility.

SHONA'S STORY

Shona's electricity was disconnected for arrears of \$1100. Shona, an Aboriginal woman who lives with her twelve children, wasn't comfortable talking on the phone so she asked her friend Jo to act on her behalf. Jo explained Shona had taken over the house when her partner was imprisoned, and she was struggling to pay her bills with limited income. Shona was willing to go onto a payment plan to pay off the debt, but the company wanted her to pay \$180 per fortnight and she could not afford this.