



## **Access to energy:**

**Response to IPART's Issues Paper on the review of regulated retail tariffs and charges for electricity 2010 - 2013**

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## **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;
- 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 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 NSW Government Department of Water and Energy for its work on utilities, 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 Consumer Advocacy Program (EWCAP)**

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 (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Indigenous consumer representative; and
- Western Sydney Community Forum (WSCF).

# 1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to comment on the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) Issues Paper on the *Review of Regulated Retail Tariffs and Charges for Electricity 2010 – 2013* (the Review). The NSW Government has committed to retaining regulated tariffs at least until 2013 and the current determination on regulated retail tariffs cease to apply on 30 June 2010.

In response to the large increase in electricity prices from 1 July 2009 the Government announced that consumers would benefit from a compensation package. The price increases were largely due to the decision of the Australian Energy Regulator (AER) to allow significant increases in the electricity distribution and transmission prices, as well as IPART's *Market-Based Electricity Price Purchase Cost Allowance – 2009 review*<sup>1</sup>. As part of the latter, IPART made recommendations to the NSW Minister for Energy on measures that would reduce the impact of price increases on low-income and other vulnerable consumers.

PIAC welcomed the Government's decision to implement some of the recommendations made by IPART to alleviate some of the impacts of price rises on low-income and vulnerable households. PIAC is, however, concerned that the assistance provided by the Government's measures will be short lived as further annual increases built into AER and IPART price determinations progressively undermine the increases in financial assistance provided to consumers.

When commenting on the impact of the Review on consumers, PIAC urges IPART to highlight where the final decision on the Review will also diminish the effectiveness of the Government's household compensation measures and make recommendations on how these programs might therefore be bolstered.

PIAC also believes that the IPART recommendations not implemented by the Government would assist households to cope with further price increases. PIAC has also highlighted regulatory changes that would assist consumers to deal with the effect of increased prices, outlined below.

## 2. Effectiveness of competition

IPART has stated that the effectiveness of competition in NSW electricity markets is important in deciding the form of regulation applied to electricity retail tariffs in NSW. IPART has further indicated that the preferred approach to measuring the levels of competition in NSW is in line with the approach used by the Australian Energy Market Commission (AEMC) in examining the effectiveness of competition in Victoria and South Australia.

PIAC is concerned about the AEMC's approach to measuring the effectiveness of competition, and notes criticisms of the integrity of this approach.<sup>2</sup> In particular, PIAC does not believe that switching rates (the rate at which consumers change from one retailer to another) are an effective proxy for measuring competition in energy markets. In addition, IPART should avoid any proxy for competition that is potentially biased by

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<sup>1</sup> The Independent Regulatory and Pricing Tribunal, *Market-based electricity purchase cost allowance – 2009 review Final Report and Determination* (2009) 2 <[http://www.ipart.nsw.gov.au/investigation\\_content.asp?industry=2&sector=3&inquiry=185](http://www.ipart.nsw.gov.au/investigation_content.asp?industry=2&sector=3&inquiry=185)> at 4 August 2009.

<sup>2</sup> UnitingCare Wesley Adelaide, *AEMC Review Comments on AEMC First Draft Report: A submission from UnitingCare Wesley Adelaide* (2008) 16 <<http://www.aemc.gov.au/Market-Reviews/Completed/Review-of-the-Effectiveness-of-Competition-in-Electricity-and-Gas-Retail-Markets-in-South-Australia.html>> at 31 July 2009.

forms of competition that do not necessarily result in consumer benefit. More specifically, the impacts of door-to-door marketing and other forms of push-marketing should be excluded from IPART's models.

IPART asks which sub-markets should be taken into consideration when measuring the effectiveness of competition. This is to ensure that certain sections of the community are not left behind by deregulation. IPART offers consumption levels, tenancy type, geographic location and income as relevant sub-markets. PIAC supports these examples, with the inclusion of Indigenous and recently arrived migrants as other sub-markets that have been identified as struggling to participate in energy retail markets.

PIAC holds significant concern about the likely impacts of the proposed privatisation of NSW electricity retailers. It seems likely that the major second-tier retailers in NSW will make strong bids to purchase the state owned retailers. In a global environment where access to capital is expensive, these retailers have benefited from recent asset sales and have expressed interest in the NSW Government assets. If these bids are successful the NSW retail environment, and indeed the retail profile of the National Electricity Market (NEM), will see a significant reduction of competition. In NSW, market share will be further concentrated amongst two or three standard retailers and the major second tier retailers will no longer be playing their current role in the market.

One of the current characteristics of the NSW electricity retail market is that the major second-tier retailers hold substantial market share in residential customers in other jurisdictions of the NEM. Using 2007 data, the table below demonstrates this.<sup>3</sup>

|                      | <b>Vic</b> | <b>SA</b> | <b>Q'land</b> |
|----------------------|------------|-----------|---------------|
| <b>AGL Energy</b>    | 28.0%      | 57.6%     | 23.0%         |
| <b>Origin Energy</b> | 29.0%      | 12.7%     | 44.0%         |
| <b>TRUenergy</b>     | 22.5%      | 13.0%     |               |

This characteristic provides the second-tier retailers in NSW with the organisational capacity and infrastructure to place standard retailers under competitive pressure, even if they hold only a relatively small local market share. If these second-tier retailers become the standard retailers, the remaining second-tier retailers are unlikely to have the capacity to provide similar levels of competitive pressure.

Therefore, PIAC strongly recommends that IPART uses conservative assumptions on the future of competition in the NSW electricity retail market, and ensures that the retail price regulatory framework is strong enough to deal with the significant risk of reduced competition over the period of the determination.

### 3. Regulated tariffs

IPART asks which tariffs should be regulated and how the tariffs should be regulated. PIAC has seen no reason why all tariffs regulated under the previous Determination should not be covered under the current Review. As stated above, PIAC has significant concern about changes to the structure of the NSW retail market and the maintenance of competitive pressure on standard retailers and therefore believes that the form of regulation should be strong enough to cope with any reduction in competition.

<sup>3</sup> Australian Energy Regulator *State of the Energy Market 2008* (2008) 172-174  
<<http://www.aer.gov.au/content/item.php?itemId=723386&nodeId=1e8ee202c5bbecf8f245b15687ac03a2&f n=State%20of%20the%20energy%20market%202008.pdf>> at 4 August 2009.

PIAC supports staggered introduction of regulated tariff movements. The nature of regulated electricity prices currently means that different price increases are all aggregated on the one date, as can be seen from the price increases as of 1 July 2009. This means that households are hit with a sudden increase in energy bills in one billing cycle. This billing cycle also happens to correspond with high winter bills for many households. To reduce the impact of this and assist households in transitioning to higher energy prices, PIAC believes there is great merit in staggering price increases. As households are billed quarterly, PIAC recommends that changes to the NSW regulated retail tariff occur either at the start of a calendar year or on the quarters not corresponding to increases in the regulated transmission and distribution charges.

There is potential benefit, both socially and environmentally, from the use of inclining block tariffs for regulated energy retail prices. PIAC recommends that IPART consider the benefits or otherwise of inclining block tariffs for regulated standard contracts in the Review, and how an inclining block tariff might be structured to balance the social benefits for consumers with efficient cost allocations in the NEM.

## **4. Periodic Review**

The previous Determination allowed for annual periodic reviews of the wholesale electricity cost allowance to permit consideration of volatility in the wholesale market and the difficulty in predicting wholesale energy prices over the period of the review. The 2009 wholesale allowance review resulted in higher energy bills for consumers.

PIAC does not support more regular periodic reviews of regulated wholesale prices, aside from exceptional circumstances. PIAC believes that businesses must recognise that there will be some risk in operating in the electricity retail market, as there is in any market. However, PIAC does understand the importance of ensuring viable and competitive retailers in the market.

One potential cause of volatility in wholesale prices is the Carbon Pollution Reduction Scheme (CPRS). The introduction of the CPRS is likely to affect the bidding behaviour of market participants and could possibly call into question the viability of others. After the introduction of the scheme, it is expected that the volatility of wholesale prices will taper off as greater understanding of the impact of carbon pricing is developed and as the market adapts.

PIAC supports the existing criteria for annual periodic reviews, where wholesale prices ten percent above or below the wholesale allowance instigate a re-opening of the Retail Price Determination. PIAC would also support a review of wholesale purchase cost allowances in the period leading up to the introduction of full carbon permit auctioning under the CPRS, and in the period following. These reviews should give consideration to the impact of any price on consumers.

## **5. Non-tariff fees and charges**

PIAC strongly recommends the abolition of compulsory security deposits for customers entering into a standard retail 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.

Similarly, PIAC does not support the continuation of late payment fees and reconnection fees, particularly for households that have been disconnected due to an inability to pay. PIAC's recent report into the experience of utility disconnections in NSW, *Cut-off II*, showed that 64 percent of households that were disconnected were required to pay a reconnection fee, and 31 percent were required to pay a late payment fee.<sup>4</sup> The report also indicated that in the majority of cases, households faced forms of financial distress other than energy hardship, indicating a systemic influence on disconnection. PIAC submits that late payment and reconnection fees should be abolished for regulated contracts in the Review.

## 6. Customer impacts

IPART outlines a number of programs designed to assist households to cope with electricity bills. PIAC is supportive of these programs, which offer a mix of direct financial assistance, crisis support and assistance to reduce bills. However, PIAC is concerned that many households in need of support are repeatedly overlooked when assistance schemes are designed. In particular, households reliant on the Newstart Allowance and some Parenting Payments are not eligible for the NSW Energy Rebate, whilst those on Newstart, Parenting Payments and some other Centrelink benefits are not eligible for the Commonwealth utilities allowance. Households that might be considered the 'working poor' are eligible for neither of these payments.

Whilst PIAC is highly supportive of household energy audits and refits for low-income households, and of the expanded eligibility criteria for the program, concern is held about the ability of the Low-Income Household Refit program to meet its goals. The scheme aims to provide in-home audits and refits to 220,000 households over four years. If the program were to roll out at full capacity and run from the start date to finish without interruption, over 1,100 households would need to be visited each week. Pilot programs are currently underway. In order for this program to reach its full potential, PIAC believes that the final date of the program must be determined by the number of households to have received assistance.

Any rise in energy prices will disproportionately hit those on lower and fixed incomes, and will even further impact on those who are unable to access assistance programs. In considering the potential impacts of the Review on vulnerable households, PIAC strongly recommends that IPART consider those who were left behind by the NSW Government's recent household compensation package, including households under exempt supply arrangements who still have no access to the Energy Accounts Payment Assistance (EAPA) scheme in spite of repeated representation to the NSW Department of Energy and Water (DWE).

PIAC strongly believes that assistance to households in greatest need could be secured by extending the eligibility of the Energy Rebate to include all holders of the Commonwealth Health Care Card. This would then include households in great need of assistance that are often overlooked for other forms of assistance, or are forced into continued reliance on crisis support for basic energy needs. This should be a priority when recommendations for further assistance are considered.

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<sup>4</sup> Jessie Connell and Wesley Hill, *Cut-off II: The experience of utility disconnections*, report prepared by Urbis for the Public Interest Advocacy Centre (2009), 38  
<[http://www.piac.asn.au/publications/pubs/cutoffII\\_20090130.html](http://www.piac.asn.au/publications/pubs/cutoffII_20090130.html)> at 18 February 2009.

All consumers can benefit from regulatory changes to improve consumer protections, however it is the most vulnerable that will benefit from those proposed below. To assist these households to deal with increased electricity prices, PIAC recommends:

- The introduction of a wrongful disconnection payment, so that households are compensated by retailers who do not fulfil their legal obligations before disconnection and that retailers face a financial incentive to ensure that internal compliance measures are adequate;
- The banning of re-connection fees after disconnection due to an inability to pay;
- That Mandatory Hardship Charters, proposed in the Consumer Assistance Policy Consultation Draft, require the approval of either the Minister or IPART to ensure compliance; and
- The introduction of a debt threshold of 1.5 times the consumer's average bill, below which disconnection is not to occur.

## **7. Conclusion**

Due to financial hardship and other factors, many households in NSW struggle to pay utility bills. IPART reported 18,162 residential disconnections from electricity supply in the year 2007/08, with 31.5 percent of those on a payment plan and 9.8 percent having multiple disconnections at the same address.

PIAC is greatly concerned about how these households will cope with increases in electricity prices and how many households might join them as energy prices continue to rise. PIAC believes that in order to ensure that electricity prices do not rise higher than efficient costs, IPART must impose price regulation that is robust enough to deal with the high risk of decreased competition in the NSW electricity retail market.

So that households on low-incomes are able to meet the costs of energy bills, IPART must ensure that these households are not penalised with non-tariff fees and charges that punish them for their financial and life situation.

In addition, IPART must consider those households that have least access to existing support schemes and make recommendations that fill these gaps.