



Access to energy II:

**Response to IPART's Draft Report and Draft Determination on
the review of regulated tariffs and charges for electricity
2010-2013**

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Joel Pringle, Policy Officer

1. 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;
- 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 (then) 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 Industry and Investment 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 (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);
- Western Sydney Community Forum (WSCF); and
- National Seniors.

2. The current review

PIAC welcomes the opportunity to provide comment to the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) in response to its Draft Report and Draft Determination, *Review of regulated retail*

tariffs and charges for electricity 2010-2013 (the draft determination). This submission follows PIAC's previous submission to the Issues Paper, *Review of regulated retail tariffs and charges for electricity 2010-2013*.¹

In that submission PIAC raised concerns including the future of competition in the NSW electricity retail market, non-tariff fees and charges and the impact of price rises on consumers. PIAC thanks IPART for addressing some of these concerns in the draft determination.

However, PIAC still holds reservations about the impact of electricity price increases on vulnerable customers and the capacity of government assistance programs to alleviate this hardship. As a general comment on increasing energy bills, PIAC stated in *Gas Price Regulation: Response to IPART's Review of regulated retail tariffs and charges for gas 2010-2013: Gas – Issues Paper*:

NSW households have recently been hit with a number of abnormally high rises in regulated energy tariffs. This includes IPART's recent draft determination on the review of electricity retail tariffs that suggests some households in the Country Energy distribution area will be paying in excess of 62 per cent more on their electricity bills by 2013. The Review points to the Australian Energy Regulator's current review of gas distribution access arrangements, for which Jemena Ltd has requested an increase of 34.3 per cent in the year 2010–11 for households accessing their network. The cumulative impact of these increases threatens the ability of many households to meet the cost of living.²

PIAC believes that the efficacy of government assistance programs has been overstated in the draft determination, as will be discussed below.

3. Retail competition

PIAC acknowledges IPART's comments about risks to retail competition in coming years.³ Given that competition has been largely stagnant since 2007, that Standard Retailers are not under pressure to offer customers market contracts based on a price discount to regulated tariffs, and the likely impact of the privatisation of NSW Government owned retailers, it seems unlikely competition in the NSW electricity retail market will improve sufficiently over the regulatory period to improve outcomes for consumers.⁴ The recent loss of Jackgreen, an active second-tier retailer and aggressive marketer, has potentially lessened competition in this market even further.

As quoted by IPART, research by the Australian Energy Market Commission shows that 66 per cent of customers rely on the retailer or a retailer's representative for their main source of information about energy offers, and are unlikely to undertake their own research.⁵ IPART also states that a lack of information in this market is leading to poor customer outcomes.⁶

¹ Joel Pringle, *Access to energy: Response to IPART's Issues Paper on the review of regulated retail tariffs and charges for electricity 2010-2013* (2009) <http://piac.asn.au/publications/pubs/sub2009080_20090805.html> at 29 January 2010.

² Joel Pringle, *Gas Price Regulation: Response to IPART's review of regulated retail tariffs and charges for gas 2010-2013: Gas – Issues Paper* (2009) [2] <http://piac.asn.au/publications/pubs/sub2009124_20091223.html> at 29 January 2010.

³ Independent Pricing and Regulatory Tribunal of NSW Draft report and determination: *Review of regulated retail tariffs and charges for electricity 2010 - 2013* (2009) [26] <http://ipart.nsw.gov.au/investigation_content.asp?industry=2§or=3&inquiry=196> at 29 January 2010.

⁴ *ibid*, [147].

⁵ Australian Energy Market Commission, *Review of the effectiveness of competition in electricity and gas retail markets in South Australia, first final report* (2008) [25] <<http://www.aemc.gov.au/Market-Reviews/Completed/Review-of->

Recent research by the Office of Gas and Electricity Markets in the United Kingdom has shown that switching retailers has often led consumers to be worse off.⁷ This is consistent with IPART research in the Hunter, Gosford and Wyong areas. The survey showed that of customers who entered into market contracts, 81 per cent of customers believed that their bills has either stayed the same or risen.⁸

Based on the concerns above, PIAC strongly supports IPART's recommendations to the NSW Government on introducing price disclosure requirements and implementing an online pricing comparator tool.⁹

PIAC acknowledges that there are some existing price comparator tools, but the service they provide appears limited. Partly these limitations stem from a lack of accessible and up-to-date price information, though PIAC is also wary of sites that gain commission through customer referrals. Given that the creation of an online comparator tool can take time, PIAC would advise that a service for providing the price data to third parties should be developed alongside or as part of the online comparator website. An example of government providing data online for third party use can be seen at www.data.gov.nz.

In the draft determination, IPART comments that markets rely on active consumers in order to balance the market power of retailers. It also comments that there is evidence that market power is currently being exercised by retailers. PIAC believes that the provision of better information for consumers will redress this exercise of market power.

However, PIAC also submits that low levels of consumer activity are inherent in markets designed to deliver essential services such as energy. In part this may be because of lack of product differentiation. With the exception of 'green' product offers, the marketable characteristics of energy services are limited to whether the supply is present and reliable. With the exception of households with low discretionary income (including those reliant on welfare payments), the impact of bills on the household budget of most households is not significant enough to elicit a desire to better understand the options available in the market. In part it may also be that essential services are viewed by the public as different to 'consumer commodities'. This is largely because they have traditionally been supplied by government-owned monopolies.

For whatever reason, it seems likely that the retailing of essential services through competitive markets will continually result in market failure and the exercise of market power by retailers due to low levels of consumer interest. PIAC recommends that IPART considers this and continues to scrutinise the exercise of market power after the introduction of regulations and services that improve access to information for consumers.

[the-Effectiveness-of-Competition-in-Electricity-and-Gas-Retail-Markets-in-South-Australia.html](#)> at 1 February 2010.

⁶ Independent Pricing and Regulatory Tribunal of NSW, above n 3 [13].

⁷ The Office of Gas and Electricity Markets, *Energy supply probe: Initial findings and remedies* (2008) [6] <<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=5&refer=MARKETS/RETMKTS/ENSUPPRO>> at 1 February 2010.

⁸ Independent Pricing and Regulatory Tribunal of NSW, *Residential energy and water use in the Hunter, Gosford and Wyong* (2008) [97] <http://ipart.nsw.gov.au/investigation_content.asp?industry=6§or=17&inquiry=146> at 29 January 2010.

⁹ Independent Pricing and Regulatory Tribunal of NSW, above n 3 [38].

Recommendation

- 1. That IPART recommends to the NSW Government that a service delivering up-to-date price information to third parties be delivered alongside a price comparator service.*
- 2. That IPART continues to monitor and address the exercise of market power by retailers.*

4. Impact on small customers

PIAC notes the assistance proposed for many households to help with the rise in living costs, including energy, arising from the Carbon Pollution Reduction Scheme (CPRS). This section will therefore focus on the impact of price increases excluding CPRS costs.

Following large bill increases in 2009, the NSW Government announced the introduction of the Consumer Assistance Policy (CAP) to assist vulnerable households. IPART promotes this as a policy that may mitigate the impact of the current draft determination for some customers.¹⁰ IPART expected the majority of the CAP to be implemented by the close of 2009, however much of the program is yet to be implemented at the current date.

Further, it is unclear to what extent the policy work on the CAP has been completed, and PIAC notes that the NSW Government and Industry and Investment NSW are yet to provide participants in the CAP public consultations with feedback on developments arising from the consultations.

PIAC acknowledges recent changes to requirements for energy retailers to have a hardship program. However, whilst this change is important and welcome, standard and large second-tier retailers (who currently provide energy services to the vast majority of the market) already provide hardship programs. PIAC sees these changes as ensuring that current standards for large retailers do not slip, as opposed to an increase in protection for consumers. It also ensures that new market entrants provide this level of consumer protection.

Of the assistance foreshadowed by the consultation process, the majority of the program has not been announced or implemented. PIAC requests that IPART seeks clarification from Industry and Investment NSW about the progress of the CAP.

Regarding other assistance currently available to households, IPART shows that many vulnerable households, such as sole-parent families and large families, continue to miss out.¹¹ Further, many low-income households and households with low-discretionary income are excluded from programs designed to reduce consumption due to the upfront costs involved.

Discussions with the Department of the Environment, Water, Heritage and the Arts (DEWHA) have led PIAC to believe that rental households have not taken up the Commonwealth Government Home Insulation Program, in spite of efforts to make it easier for them to participate. Similarly, whilst home audits are free for low and middle-income households through the Green Loans scheme, many households are in effect excluded as the program is marketed towards households able to take on debt through the scheme. Additional debt burden is not appropriate for households without the ability to meet repayments.

Upon examination, it is apparent that existing forms of energy affordability assistance both exclude the consumers most vulnerable to increased costs and fail to keep up with the unprecedented increases

¹⁰ *ibid*, [147].

¹¹ *ibid* 1[37].

expected over the coming regulatory period. Recent policies aimed at assisting households will have the effect of continuing this exclusion, and force the most vulnerable households into repeated reliance upon crisis support. This is neither a dignified nor adequate solution to what is essentially an affordability issue.

PIAC strongly recommends that IPART advises the Government on the importance of expanding the eligibility for the Energy Rebate to include vulnerable consumers who are not already eligible. PIAC believes that the best way to achieve this is by expanding eligibility to include all holders of the Commonwealth Health Care Card.

Secondly, PIAC believes that it is necessary to index energy rebates to increases in energy prices. This is to ensure that the real level of assistance does not diminish over time.

These recommendations are not revenue neutral for the NSW Government. It is possible that the redistribution of GST revenue collected on increased energy bills will offer a revenue source for changes to the Energy Rebate, although PIAC acknowledges that the redistribution formula is complex and results in redistribution away from NSW. PIAC requests that IPART look into the effects of increased energy bills on the redistribution of GST funds to NSW.

PIAC strongly believes that energy-efficiency has an important role to play in ameliorating the impacts of bill increases. It also has the added benefit of improved carbon emission outcomes at a relatively low-cost to the economy. The failure of recent government interventions to assist low-income households and renters through energy-efficiency schemes indicates that a new approach is required.

In a recent submission to the NSW Office of Fair Trade on changes to the Residential Tenancies Act, PIAC proposed the following:

Acknowledging that energy-billing practices do not provide the same hook for energy-efficiency measures as available in water, PIAC still believes that it is important for the draft Bill to create a similar means to overcome the split incentive that plagues many household energy-efficiency programs driven by different levels of government. If this is not possible, PIAC recommends that the draft Bill create a facility for the creation of regulations that impose mandated energy-efficiency conditions upon landlords.¹²

PIAC strongly recommends that IPART explores the role that regulation of rental property energy-efficiency standards can play in assisting households struggling with rising energy bills.

Recommendations

- 3. That IPART clarifies progress on the Consumer Assistance Policy with Industry and Investment NSW.***
- 4. That IPART recommends that the NSW Government extends the eligibility of the Energy Rebate to all Commonwealth Health Care Card holders.***
- 5. That IPART recommends that the NSW Government indexes energy rebates to increases in energy prices.***
- 6. That IPART looks into the possibility of using increased GST revenue as a funding source for recommendations extending the eligibility of the Energy Rebate and indexing the Energy Rebate to increases in energy prices.***

¹² Chris Hartley and Joel Pringle, *Homeless but not houseless: submission to NSW Fair Trading on the draft Residential Tenancies 2009* (2009) [10] <http://piac.asn.au/publications/pubs/sub2009123_20091223.html> at 29 January 2010.

7. That IPART considers the role of regulation of energy efficiency of rental properties in assisting households to cope with increasing energy bills.

5. Conclusion

The coming years appear uncertain for retail market conditions in NSW. This is due to a number of factors including the privatisation of NSW Government owned assets, the impact of the introduction of the National Customer Protection Framework and the potential for wholesale price fluctuations due to climate change policies. However, it is certain that the cost of energy will rise at unprecedented rates and that this will have a significant impact on vulnerable and disadvantaged households.

The increased transparency that the draft determination provides for the expected impact of price rises on different household types is most welcome. It shows that some households will be impacted more than others, and that the assistance required will be received by some households but not others.

The challenge for the NSW Government is to provide a safety net that adequately addresses rising prices. If this is not achieved, retailers will likely respond to increased customer debt with rising disconnection rates. If this situation occurs as a result of deteriorating energy affordability, the government will be held responsible. The submission above outlines some of the issues that must be addressed if such a situation is to be avoided.