



27 September 2007

Dr Michael Keating
Chairman
Independent Pricing and Regulatory Tribunal
Sydney NSW

By email: ipart@ipart.nsw.gov.au

Dear Dr Keating

Retailer of Last Resort (RoLR) supply fee for small retail customers

Please find attached the Public Interest Advocacy Centre's submission to the review of RoLR fees.

Please call me if you wish to discuss any of the issues raised in our submission.

Yours sincerely

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Retailer of Last Resort Supply Fee for Small Retail Customers

27 September 2007

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Introduction

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues. PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

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 Centre Funding Program. PIAC generates approximately forty per cent of its income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Utility Consumers' Advocacy Program

The Utility Consumers' Advocacy Program (UCAP) was established in 1998 by PIAC, funded by the NSW Government, to develop policy and advocate in the interests of residential consumers, particularly low-income consumers, in the NSW energy and water industries. The project is based at PIAC and UCAP staff receive broad policy direction from a community based Reference Group, who's members include:

- Council of Social Service of NSW (NCOSS);
- Tenants Union;
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Western Sydney Community Forum;
- Rural and remote consumers; and
- Institute of Sustainable Futures, University of Technology.

1. Retailer of Last Resort events

PIAC appreciates the opportunity to comment on the Independent Pricing and Regulatory Tribunal's (IPART's) *Review of retailer of last resort supply fee for small retail customers: Electricity – Issues Paper*, August 2007. This review is a result of the EnergyOne-triggered Retailer of Last Resort (RoLR) event that took place in July this year. This was not caused by retailer failure, but rather by the retailer making a business decision to withdraw from the market for the sake of financial expediency. The EnergyOne experience should be used to identify issues that may arise from future RoLR events .

2. Terms of Reference

PIAC is concerned that, as with the terms of reference for IPART's electricity price determination for 2007-10, in reviewing the RoLR fee IPART will not expressly consider the costs and benefits from a consumer perspective.

3. Impact of RoLR fee

The Standard Retailers have considerable and potentially costly obligations to perform in their duties as RoLRs. However, the NSW Government has charged the state-owned retailers with protecting the obligation to supply, and RoLR duties are necessary to ensure the safe and reliable delivery of an essential service to consumers. RoLR obligations are a consequence of creating competition in a naturally monopolistic essential service industry.

PIAC questions the appropriateness of penalising consumers, through implementing RoLR fees, for obtaining an essential service through an uneconomic or unscrupulous retailer. The EnergyOne RoLR experience demonstrated that the current fee structure is inappropriate because it allows retailers to shift the responsibility and cost of providing an essential service to state-owned businesses and consumers, with no consequent detriment.

3.1 Negative impacts on consumers

RoLR events inconvenience consumers in a number of ways. For instance, consumers may have to pay more whilst on the standard tariff; they may be subject to a new billing cycle that causes fiscal complications; they need to spend more time and effort shopping around for a new retailer; or (as discussed at 2.5 below), they may not be able to recover their security deposit. A fee that comes on top of these inconveniences may make it more difficult to pay for other essential items — especially in the case of consumers on low incomes or experiencing other hardships.

3.2 Negative impacts on retailers

The implementation of the RoLR fee will adversely affect standard and second tier retailers. For example, if customers transferred after a RoLR event are penalised with a fee, they may be less likely to want to engage with the market again, particularly by chancing a smaller second tier company. In this way, the RoLR fee could become a barrier to competition. Conversely, if RoLRs implement the fee, they run the risk of transferred customers thinking they are ungenerous. This may be why the RoLRs did not apply the \$25 fee to transferred customers after the EnergyOne event.

IPART should obtain information on the behaviour of transferred customer after the RoLR event, and the way in which the transition process or the waiving of the RoLR fee affected their perception of the RoLR.

3.3 Wholesale Market Conditions

When the RoLR fee was introduced, it was intended that it “Would allow for some recovery of abnormal costs that may be incurred, for example, for a special meter reading or customer service visit to the customer, administration, and management of special risk factors”.¹ This sets it aside as a mechanism to pass on wholesale market costs to transferred customers placed on a regulated tariff. In any case, IPART has set regulated retail tariffs at cost reflective levels and the regulated tariff should sufficiently account for changes to the wholesale market. Trigger points have been incorporated into the determination so that the tariff can be adjusted if wholesale prices exceed a certain level.

PIAC also notes that the Electricity Tariff Equalisation Fund (ETEF) will operate at 80% of its current level for the majority of the term of the current RoLR fee review, dropping to 60% for the last 6 months of the review period. The wholesale risk faced by the RoLRs will therefore be substantially covered, and consequently, the risk to consumers should also be minimised.

Lastly, PIAC supports the view that this review should not reopen the issue of market based electricity purchase costs.

¹ NSW Treasury Regulatory Impact Statement for the *Electricity Supply (General) Regulations 2001*, p 52.

3.4 Benefits to Retailers

IPART recently estimated that the cost for Standard Retailers to acquire new customers through marketing or other means was \$35. In July this year, Australia Power and Gas in Victoria paid \$1million, or \$67 per customer, to acquire 45,000 customers. This was considered a bargain price.² Yet, when RoLR events occur, RoLRs acquire customers without outlaying the usual acquisition costs. In making its determination, IPART should therefore clearly set out how the benefit of acquiring customers through RoLR mechanisms has been weighed up against the cost of administering a RoLR customer transfer.

3.5 Security Deposits

There appears to be no guarantee that customers who provided a security deposit to a retailer that subsequently fails will have their security deposit returned when the RoLR event occurs. These customers may then be required to provide a new security deposit to the RoLR. Applying a RoLR fee on top of having to provide two security deposits places an unrealistic burden on consumers.

4. Industry Fund

The burden of maintaining supply continuity should be either borne by the failed retailer or shared around the industry, rather than being borne by RoLRs and/or consumers.

For instance, each retailer could be required to maintain their own fund, containing a set amount (equivalent to the RoLR fee) per market contract customer, to be held in escrow to cover the costs of transferring customers to a RoLR. This money could earn money in approved investments and therefore still benefit the company. This would be an effective disincentive for retailers to withdraw from the market, and would place the cost of the RoLR transfer on to the company responsible for the event.

Alternately, all retailers could be required to contribute a set amount per customer to an industry-wide fund, which would then be accessible to RoLRs to cover the costs involved in transferring customers. Access to the fund could be by Ministerial discretion, similar to the endorsement process for charging RoLR fees.

5. Issues to consider if a fee is permitted

5.1 Fee limited to September 2009

The stability and structure of the electricity market is hard to predict beyond 2010, due to the phasing out of ETEF and the possible implementation of the recommendations of the Owen Report. Therefore, IPART's recommendation to limit the review period until September 2009 is sensible. Future determinations for RoLR fees should follow the current transparent consultative process.

5.2 Fee structure

A fixed fee per customer sends a much clearer signal to customers as to the risks involved in entering into a market contract, particularly if the fee is delineated in the contract (see 4.3).

A methodological calculation of the RoLR fee, based for example as a proportion of wholesale market prices, would require substantial input from the retailers to calculate and evidence. Further, a methodological calculation is disadvantageous from a consumer's perspective for two reasons: it would be confusing; and because a RoLR event is more likely to occur when wholesale costs are high, the RoLR fee would also be high.

² Australian Power and Gas media release, 6 July 2007.

5.3 Fee specified in contracts

The RoLR fee is a consequence of the increased risks that consumers face when they sign a market contract. These contracts should therefore include the full amount that a customer is liable to pay in the occurrence of a RoLR event. This would provide relevant information to customers to enable them to make informed choices regarding electricity contracts. It conforms with Schedule 1, Clause 2 (2), of the *Electricity Supply (General) Regulations 2001*, which requires any charge related to the supply relationship between a customer and retailer to be set out in the contract. Customers should be verbally informed of this potential charge by the salesperson before signing a contract.

5.4 Supply arrangements

The success of the July RoLR transition process was based largely on EnergyOne's cooperation. PIAC believes that this cooperation should be made mandatory so that future RoLR transitions are equally smooth. For instance, the onus should be on the failed retailer to provide all relevant information regarding the transferred customers to a RoLR. Though such a provision would need to be put in to the market contract to overcome privacy concerns, it would make it much cheaper and efficient for RoLRs to provide, and customers to enjoy, an uninterrupted supply of electricity.