



Retailer of Last Resort Supply Fee for Small Retail Customers

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The Public Interest Advocacy Centre

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.

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

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.

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.

The current review

PIAC appreciates the opportunity to comment on the Independent Pricing and Regulatory Tribunal's (IPART) *Review of retailer of last resort supply fee for small retail customers: Electricity – Draft Determination*, October 2007.

Response to draft recommendations:

1. Setting the fee

PIAC maintains that charging residential consumers a fee for being transferred to a retailer of last resort (RoLR) due to their retailer withdrawing from the market is an unfair impost. PIAC notes that this issue is outside the scope of IPART's terms of reference, but will discuss the matter in greater detail at point 5 below.

PIAC believes that there has been insufficient evidence provided to justify the proposed increase in the RoLR fee from \$25 to \$35, and therefore does not support IPART's draft recommendation on the fee increase. In this regard PIAC notes that:

- The Terms of Reference for this review ask for the fee to be calculated on the basis of the costs imposed on RoLRs in transferring consumers. However, the Draft Report does not provide evidence of the costs involved, and repeatedly describes them in uncertain terms. For instance, it states that transferred consumers 'may churn relatively quickly' away from the RoLR, and that 'a transferred small retail customer

is *likely* to remain with them for only one year on average'.¹ Indeed, the report admits that 'at this stage there is not sufficient data to quantify actual experience'.²

- The Draft Determination fails to establish on evidence that administrative costs have risen since 2002, when the IPART first set the fee of \$25.
- IPART also noted in the Draft Report that retailers did not quantify the benefits that they accrue from having consumers transferred to them³, nor did they deduct these benefits from the costs incurred.⁴

PIAC recognises that some of the costs incurred in RoLR events may not be calculable in advance because of the particular circumstances in which they occur. However, any decision by IPART on the costs involved needs to be based on hard evidence of costs rather than unquantified speculation by retailers.

PIAC rejects the notion that some of the information needed to determine costs cannot be presented because it is 'commercial-in-confidence'. IPART could overcome the problem of publishing commercially sensitive information by providing an average of the data provided by the three RoLRs. In any event, knowledge of the costs RoLRs incur does not offer a competitive advantage to other retailers, and is unlikely to be exploited by rival retailers.

2. Fixed-fee structure

Until such time as the transfer fee is abolished, PIAC supports IPART's recommendation to continue with a fixed fee because it prevents the pass through of wholesale electricity costs to consumers. This would be an improper application of the fee, which is designed to capture additional administrative costs to RoLRs as a result of customer transfer obligations. The RoLR fee should not include wholesale costs that are already passed through to consumers through the regulated prices determined by IPART.

The fixed-fee structure is beneficial to consumers because it sends a much clearer signal to consumers of the risks involved in entering into a market contract, particularly if the fee is delineated in the contract (see point 5 below). It also reduces the cost of regulation, as well as eliminating the onerous and expensive task of calculating the fee.

3. Application of Electricity Tariff Equalisation Fund (EETF) to RoLR customer load

PIAC applauds IPART's recommendation that the EETF cover the entire load of transferred consumers for up to three months after a RoLR event. This is an appropriate method of minimising the risk for all parties involved in a RoLR, none of whom were responsible for the RoLR event occurring. It also limits the pressure placed on the fee to be used as a mechanism by RoLRs to recover high wholesale electricity costs.

This approach allows RoLRs to be compensated for the important task of ensuring that consumers have secure and constant access to electricity to maintain their standard of living. It does not disadvantage non-RoLR energy companies due to the time limitation. It also demonstrates the importance of EETF and regulated retail tariffs in providing protection to residential consumers from the volatility of the wholesale market.

¹ Independent Pricing and Regulatory Tribunal, *Review of retailer of last resort supply fee for small retail customers. Electricity – Draft Report (2007)* 17. Emphasis added.

² *Ibid*, 18.

³ *Ibid*, 18.

⁴ *Ibid*, 19.

4. Timeframe for determination

The electricity market in NSW is potentially entering another period of transformation that would effect current RoLR arrangements. For instance, a nationally based RoLR regime is currently being created by the Ministerial Council on Energy's (MCE) Retail Policy Working Group (RPWG). RoLR arrangements would also be affected if the NSW Government implements the recommendations made in the Owen Report.⁵

Therefore, unless substantial changes are made to the structure of RoLR arrangements in NSW, PIAC supports IPART's recommendation that the fee apply until September 2009.

5. Alternative approaches

5.1 Cost recovery

Although PIAC supports the recommendation that 'the NSW Government consider alternative approaches to address the wholesale energy price issue'⁶, this should not be limited to the consideration of wholesale prices. As raised in PIAC's previous submission on the RoLR review and earlier in this submission, the imposition of a RoLR fee does not fairly allocate the responsibility for meeting RoLR transfer costs, nor allow RoLRs to efficiently recover these costs.

Essentially, 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, as demonstrated by the 2007 EnergyOne RoLR experience. The imposition of this fee thus effectively contradicts the terms of reference for IPART's most recent retail price determination⁷ by placing more barriers for consumers to enter the competitive market.

The burden of maintaining supply continuity should either be carried by the failed retailer or shared around the industry, rather than being borne by RoLRs and/or consumers. PIAC recommends the creation of an industry fund/insurance scheme as the most viable and equitable solution. Each retailer could be required to maintain its 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 interest in approved investments and therefore still benefit the company. It would be a disincentive for retailers to withdraw from the market, and would place the burden of the RoLR transfer cost 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.

Irrespective of the method of cost recovery, PIAC urges the NSW Government to consider the following issues in relation to the existing RoLR fee structure.

⁵ Professor Anthony Owen, *Inquiry into electricity supply in NSW* (2007).

⁶ IPART, above n 1, 2.

⁷ Independent Pricing and Regulatory Tribunal, *Promoting retail competition and investment in the NSW electricity industry. Final Report and Determination* (2007). See the terms of reference at Appendix A.

5.2 Supply arrangements

The Draft Report acknowledged that the costs associated with the 2007 RoLR event were kept relatively low by 'Energy One's co-operation in providing transferred customer information'.⁸ The NSW Government should create a framework so that this co-operation is the norm and not the exception. The onus should be on the failed retailer to provide all relevant information regarding the transferred customers to a RoLR.

5.3 Fee specified in contracts

If consumers are to assume more risk in entering the competitive market by being liable to pay a RoLR transfer fee, they should be informed of that risk in order to make an informed choice. The NSW Government should amend the *Electricity Supply (General) Regulations 2001* (NSW) (Regulations) to require market contracts or disclosure notices to outline the amount that a customer may be liable to pay in the occurrence of a RoLR event, as is currently required with other fees.⁹

5.4 Security Deposits

The NSW Government should consider protections so that customers who provide a security deposit to a retailer that subsequently fails are able to reclaim their deposit. If their security deposit is not returned then they should not be denied access to electricity connection for failure to provide a new security deposit to the RoLR, as is currently possible under Clause 64(1)(a) of the Regulations.

⁸ IPART, above n 1, 2, 19.

⁹ This would conform with c 42 (2A)(i) or Schedule 1, c 2(2) of the Regulations.