



public interest
ADVOCACY CENTRE LTD

Gas Price Regulation:

Response to IPART's Review of regulated retail tariffs and charges for gas 2010 – 2013: Gas – Issues Paper

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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 Issues Paper, *Review of regulated retail tariffs and charges for gas 2010 – 2013* (the Review).

Standard Retailers play an important role in protecting consumers in the NSW gas retail market, a role that is required due to the failure of the gas retail market to provide these protections through competition. The regulation of price is a key component of this framework. Regulated retail tariffs should therefore be considered as a 'safety net' tariff for customers who are unable to access the benefits of a competitive market contract.

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 2013.¹ 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.² The cumulative impact of these increases threatens the ability of many households to meet the cost of living.

PIAC, in this submission, seeks to answer some of the questions posed by IPART in the Issues Paper. Noting the nominal percentage increases in tariffs that are due to issues under the control of this review, PIAC focuses on the cumulative impact of tariff rises and other regulations on consumers.

3. Form of regulation

IPART has proposed to continue to use the Voluntary Transitional Pricing Agreement (VTPA) form of light-handed price regulation for the Review. VTPAs have been used over the previous two regulatory periods.

PIAC has no objection to the use of VTPA as the form of regulation if IPART is satisfied that this has been sufficient to minimise retail operating expenditure and retail margins to efficient levels. However, PIAC is concerned about the use of light-handed regulation if any significant unforeseen events lead to a reduction in competition in gas retail (for example, the withdrawal of a retailer from the market or a Retailer of Last Resort event).

IPART asks whether there is adequate information for customers to make informed choices when choosing a gas supplier. In response to IPART's *Review of regulated retail tariffs and charges for electricity 2010 – 2013: Electricity – Issues Paper*, PIAC submitted that it is difficult for consumers to compare prices across electricity retailers, and in some cases even difficult to find the price of a market tariff until the customer signs up online.³ PIAC believes that this is also the case in the gas retail market. By failing to provide potential customers with price information, customers will be forced to choose retailers on non-price offers. Allowing retailers to avoid competing on price has direct consequences for energy affordability.

This is particularly unacceptable given the suitability of retailer websites for providing this information. In the *Review of regulated retail tariffs and charges for electricity 2010 – 2013: Electricity – Draft Report and Draft*

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- ¹ Independent Regulatory and Pricing Tribunal of NSW, *Review of regulated retail tariffs and charges for electricity 2010 – 2013: Electricity – Draft Report and Draft Determination* (2009) [3]
<http://ipart.nsw.gov.au/investigation_content.asp?industry=2§or=3&inquiry=196> at 22 December 2009.
 - ² Independent Regulatory and Pricing Tribunal of NSW, *Issues Paper - Review of regulated retail tariffs and charges for gas 2010 – 2013: Gas – Issues Paper* (2009) [4]
<http://ipart.nsw.gov.au/investigation_content.asp?industry=1§or=1&inquiry=205> at 22 December 2009.
 - ³ Mark Ludbrooke, *Online Electricity Prices* (2009) Public Interest Advocacy Centre [1]
<http://piac.asn.au/publications/pubs/sub2009092_20090928.html> at 22 December 2009

Determination, IPART recommended that the Government NSW introduce a requirement for retailers to publish information on offers and that the Government provide an online price comparator service.⁴

PIAC believes that this recommendation should be reiterated in this review in respect of gas tariff offers and prices, and any comparator service provided by Government should include functionality to compare both electricity and gas tariffs.

Recommendation

1. *That the Independent Pricing and Regulatory Tribunal of NSW recommend to the NSW Government that it the introduce regulations that require retailers to publish information on offers and that the NSW Government develop and provide a price comparison service enabling consumers to compare electricity and gas tariffs.*

4. Dealing with risk

IPART asks whether the Standard Retailers' proposals to pass network charges through to customers should be accepted. PIAC would have no concern with this occurring.

Another pass-through proposed by retailers is of costs associated with national climate change measures, most significantly costs associated with the Carbon Pollution Reduction Scheme (CPRS). There is much uncertainty about what these costs might be, including both uncertainty about whether or not the scheme will be successfully implemented and, if so, the resulting carbon prices.

To deal with this uncertainty, PIAC supports the introduction of an annual adjustment mechanism. This would allow for a degree of transparency of the costs of the CPRS if and when they are faced by consumers. However, PIAC sees the need for IPART to set the efficient pass-through benchmark rather than allow the retailers to set their own adjustments.

Recommendation

2. *That the Independent Pricing and Regulatory Tribunal of NSW introduce an annual benchmark adjustment process for costs associated with national climate change reduction measures.*

5. Gas is an essential service

IPART asks whether the supply of gas should be considered an essential service. PIAC considers the affirmative answer to this question to be self-evident. PIAC is concerned that IPART felt the need to ask this question and is further concerned about the implications of IPART's query.

PIAC is concerned that in asking this question, there is an assumption that gas can be substituted with other fuel types. In some cases this may be true: for example in the construction of new housing or following a change of address, and at that point in time where appliances are to be replaced.

Residential energy and water use in the Hunter, Gosford and Wyong: Results from the 2008 household survey, published by IPART in 2008, showed that '[t]hree quarters of households with mains gas use it for at least

⁴ Independent Regulatory and Pricing Tribunal of NSW, *above n 1*, [3].

two out of the three available purposes...⁵ It would be reasonable to assume that a state-wide sample would give a similar result.

To build regulations on an assumption that gas is not an essential service would be to threaten the well being of households that are not in a position to simultaneously replace hot water systems, heating, cooking and other appliances. To do so would leave these households with significant stranded assets that, due to income constraints, cannot be replaced with alternatives fuelled by electricity. For the majority of households with mains gas, gas cannot practicably be substituted with alternative fuels.

6. Non-tariff fees and charges

IPART asks whether it is reasonable for the Standard Retailers to introduce a new fee for the payment of gas bills using credit cards. PIAC does not believe that there is justification for credit card fees under the regulated tariff. Acknowledging the costs involved, PIAC believes that this should be recovered by the regulated tariff.

IPART asks whether it is reasonable for Standard Retailers to change the level of the late payment fee. In response, PIAC submits that late payment fees should not be payable on standard contracts. PIAC agrees with IPART's statement in the Issues Paper that late payment fees should not be used to create an incentive for customers to pay on time⁶, however further believes that the costs associated with late payment should be included in the operating costs to be recovered through regulated tariffs.

This position does not extend to market contract offers. Regulated tariffs, and their associated non-tariff conditions, are a safety net for consumers who cannot benefit from the protections offered by a competitive market working in tandem with more general consumer protections. As such, regulated tariffs are a safety net required due to market failure. Retailers have other processes available to deal with customers who fail to pay bills. As such, late payment fees should not be applicable to regulated tariff customers.

IPART asks whether it is reasonable to add a premium onto network miscellaneous charges. PIAC strongly believes that this is not reasonable and that the administration costs related to network pass-throughs should be considered by IPART to be an operating expense.

⁵ Independent Regulatory and Pricing Tribunal of NSW, *Residential energy and water use in the Hunter, Gosford and Wyong: Results from the 2008 household survey* (2008) [34] <http://ipart.nsw.gov.au/investigation_content.asp?industry=6§or=17&inquiry=146> at 22 December 2009.

⁶ Independent Regulatory and Pricing Tribunal of NSW, above n 2 [37].

Recommendations

3. *That the Independent Pricing and Regulatory Tribunal of NSW reject the introduction of credit card fees.*
4. *That the Independent Pricing and Regulatory Tribunal of NSW abolishes late payment fees under regulated charges.*
5. *That the Independent Pricing and Regulatory Tribunal of NSW reject the request for an administration charge for network miscellaneous charges.*

7. Conclusion

PIAC broadly support IPART's approach to the review of regulated tariffs and charges for gas for the period 2010–13. PIAC does, however, have some concerns. These concerns are around the role that standard contracts play in the energy market to protect consumers, and what PIAC sees as measures that might be appropriate in market contracts but not in standard contracts.

More generally, PIAC is concerned that rising energy prices over the regulatory period will have serious consequences for many households. Although the issues within the scope of this review are not set to drive significant price increases in and of themselves, retailers are the key point of contact for customers and have a responsibility, along with government, to facilitate access to energy supply to all households.