

08 November 2019

Dr Paul Paterson
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop, Sydney NSW 1240



Dear Dr Paterson

IPART 2018-19 Review of the performance and competitiveness of the NSW retail electricity market – Draft report

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to IPART's *Review of the performance and competitiveness of the NSW retail electricity market – draft report*.

PIAC supports IPART's ongoing role in monitoring the performance and competitiveness of the NSW retail electricity market. In the Draft Report IPART recommends that their market monitoring role be discontinued on the basis that this function is effectively duplicated by other national market and regulatory bodies, such as the AEMC, AER and ACCC.

PIAC acknowledges there is duplication between IPART and national market and regulatory bodies, but contends that, with a remit in the National Energy Retail Law (NERL) to report on any other matters they think appropriate, IPART has the scope to go beyond those assessments with wider and more targeted analysis to better promote the interests of NSW households and other energy users.

IPART has a unique and important role as an expert, jurisdiction-specific regulator with a remit to monitor, assess and provide information and recommendations on the performance of the energy market.

PIAC recommends that IPART revise its previous approach to this review, in particular its assumptions regarding the intrinsic value of retail competition, and test aspects of the nature of competition and how it performs in relation to the actual impacts and outcomes for NSW households and other energy users. This would necessarily involve a more qualitative analysis than that currently undertaken.

IPART has the capacity to access and analyse additional NSW-specific information to enable more meaningful analysis than that by other agencies. For example, data collected by Service NSW and the Department of Planning, Industry and

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Environment through the NSW energy rebates summary report¹, in conjunction with information sources already used by IPART, could enable a much-needed view of lived experience of NSW households.

While existing monitoring uses median and average bill data as an indication of the performance of the market, this provides an incomplete and potentially misleading picture, and presumes general availability of these offers and high engagement. A more accurate and complete picture of the performance of the market and real outcomes for consumers would be achieved by also considering:

- What offers consumers are actually engaging with, including how many consumers are on the range of different price offers available.
- How much electricity consumers are using and what this costs on the various offers available. For instance, the recent NSW rebate summary indicated that rebate consumers on standard offers were generally consuming less energy than those on market offers². This is important as it indicates the costs of some deals may result in consumers using less electricity than is necessary for their essential needs. The Energy Switch service operated by ServiceNSW represents a potential source of valuable data in relation to NSW consumers actual usage, and final bill costs.
- The observed switching and renewal behaviour of consumers. Current assessments look only at the total number of switches, in conjunction with the numbers on market and standing offers.

PIAC notes that the recent NSW rebate summary report indicated that the actual switch rate for NSW rebate customers in 2017-18 was 20 percent lower than the rate assumed by the AEMC, whose data IPART presented in table 2.1 of the draft report. Analysis of the actual behaviour of consumers is important as total switching numbers are likely to be materially distorted by the small number of 'highly active' consumers who churn very regularly, and who's behaviour potentially adds costs that must be recouped from other consumers.

- The state of the market for innovative energy retail products and services, particularly those that households can generally only access via retailers, such as smart metering, online energy portals and apps, and demand response. This analysis could be supported by PIAC's own annual survey of NSW retail innovation, last undertaken in February 2019 and scheduled to be updated in February 2020.

PIAC considers that a number of the conclusions IPART draws in the draft report do not accurately represent the performance of the retail market in respect of the outcomes and impacts for NSW consumers. Accordingly, we note the following:

- IPART observes that retailers are competing on price, with a significant spread of offers available. IPART does not appear to consider whether (or how much) price variation is appropriate in the delivery of the essential service of electricity.

While price dispersion is reasonable and expected in relation to differentiated products and those consumers can choose not to purchase, in a market with little variation between

¹ NSW Government. '[NSW energy rebates summary report: analysis of program reporting data for the period July 2017 – June 2018.](#)'

² Ibid.

sellers of a product and an objectively narrow-ranging cost to serve, PIAC regards a wide price spread as a sign of market failure.

It is possible to estimate what it costs retailers to deliver services to consumers, including a reasonable margin. The Victorian Essential Services Commission (ESC) has done this analysis in relation to their own default offer. A market that delivers a range of products substantially above this price, and one many consumers are paying this excess for an essential service, should be regarded as performing poorly³. PIAC recommends that IPARTs analysis of the performance of the competitive market in NSW include analysis of the number of offers above the efficient cost of service, and how many consumers are impacted by excess cost offers.

- In observations on retail price trends for the period 2007-2019 in section 1.3.2, IPART comments on increasing network costs driving the significant rise in retail prices over the period 2007-13. Comments regarding the changes in subsequent periods link these to increases in wholesale costs. However, periods of decreasing retail prices appear to be attributed only to the operation of the competitive market, rather than reductions in these underlying costs.

PIAC considers this an incomplete, potentially misleading analysis. An assessment of the relative performance of retail competition over time should present contributing factors consistently, tracking network and wholesale costs over time.

PIAC considers the use of the 'median lowest market offer' in this analysis is misleading. Lowest market offers are, at best, only available to a small minority of consumers. These offers are often 'loss-leading' and likely to be below the efficient cost of operation for retailers. These offers are not indicative of the shape of the market, or a reasonable marker of the outcomes it is delivering for consumers. If this analysis is continued, PIAC recommends using the median market offer, rather than the median lowest market offer.

- In assumptions that price dispersion is a sign of a workably competitive market, retailers are assumed to need to be able to charge some consumers more, in order to make lower cost offers available for others. This assumes that the availability of lower cost offers demonstrates that consumers have access to efficient well priced services, and can get their essential services at a fair price. By this logic, an effectively performing retail market delivers better outcomes for consumers who engage and participate regularly and 'actively'.

PIAC considers that this is based upon a number of assumptions that do not reflect consumer behaviour or best interests, which have implications for IPARTs assessment of market performance. Specifically:

- Retailers are assumed to need to charge a significant proportion of consumers above an efficient price, to provide scope to offer other consumers lower prices, and to develop and employ innovative products. This assumes that retailers need a 'positive' incentive, so they benefit financially in advance of any action that is intended to be incentivised, and where they do not bear any direct cost or risk of not engaging in that behaviour.

This entrenches inertia, as it allows retailers to 'benefit' from inefficient pricing, regardless of whether they innovate or compete. This leaves the potential for some

³ PIAC has attached submissions made to the AER in response to their determinations of the DMO, presenting arguments in relation to how a competitive market should work for consumers.

consumers to benefit (and the quantum of that benefit) up to retailers, with no transparent mechanism incentivising efficiency. PIAC regards this as inappropriate in the provision of an essential service, particularly one that is largely homogenous.

- Consumers are considered to want to mitigate losses. It is assumed they will become more active in the market if they face penalties for not being so. This is predicated on two faulty assumptions:
 - Consumers are driven by ‘negative incentives’ based on a guaranteed penalty and the possibility of a future benefit if the desired behaviour is undertaken. PIAC considers this is not appropriate in the delivery of an essential service such as electricity, where consumers do not have the option not to purchase, and do not have knowledge of the ‘fair value’ of retail services⁴
 - Participation enables consumers to secure a better priced deal through navigating the competitive market. Research undertaken by the Victoria Energy Policy Centre illustrates that this is not the case. Examining nearly 50,000 actual bills, the research demonstrated that the price difference for consumers who switched recently and those who did not, was negligible⁵. The conclusion drawn was that consumers are not able to effectively mitigate their losses or impose efficiency on retailers through participation in the market.

On this basis, PIAC considers that IPART undertake further examination of the operation of the retail market and its interaction with consumers. It is imperative that assessment of market performance critically examines how effectively retail competition is driving efficiency in retail operation, and the delivery of affordable essential electricity services to all consumers.

Continued engagement

PIAC would welcome the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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⁴ The attached responses to the AER in relation to the DMO process provide further context and explanation in relation to the need for an effective value indicator for consumers

⁵ Victoria Energy Policy Centre. ‘Do Victoria’s households leave less money on the table when they switch electricity retailers?’ September 2019.