2 August 2018

Dr Peter Boxall
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35, Haymarket Post Shop
NSW 1240

Dear Dr Boxall

Information Paper – monitoring the retail energy markets during 2017-18

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.

Retail electricity prices across NEM states have steadily increased in real terms since deregulation of the retail electricity market began in the 1990s.[1] Similarly, retail gas prices have increased significantly since 2011.[2] Any price rises will further burden consumers – particularly low income and vulnerable consumers, for whom any increase to cost of living is of substantial detriment. In light of this, PIAC supports the continued monitoring of both NSW retail electricity and gas prices and welcomes the opportunity to provide input to the Independent Pricing and Regulatory Tribunal's (IPART) Information Paper.

Indicators for assessing retail competition

PIAC generally supports the indicators IPART has proposed for assessing competition. In particular, PIAC supports explicitly including customers' ability to access and make meaningful use of time of use tariffs, digital metering and emerging technologies such as solar and storage as factors in considering the effectiveness of retail competition.

PIAC also supports explicitly examining whether there is any instance of price disparity between regional and urban customers. PIAC is concerned that regional and rural customers may miss out on the benefits of retail competition and consequently pay more than they need to for essential energy services and have fewer choices to supplement or augment their energy supply.

Customer outcomes

In its 2018 Retail Energy Competition Review, the Australian Energy Market Commission (AEMC) found that "while competition in the retail energy market continues to evolve, it is currently not delivering the expected benefits to consumers."[3] In particular, the AEMC characterised retail price markets as: having complex and confusing tariff structures; having increasing price dispersion which is driven by discounting rather than effective segmentation ;

1 Carbon + Energy Markets, *Australia's retail electricity markets: who is serving whom?*, 2016.
2 Oakley Greenwood, *Gas Price Trends Review 2017*, December 2017, 222.
3 AEMC, *2018 Retail Energy Competition Review*, June 2018, i.

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and structured in a way such that these discounts are difficult to compare as often they are subject to a number of eligibility conditions. Such insights are also supported by the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry final report which noted, amongst many other issues, that:

> Incumbents have benefitted from large parts of their customer bases being inactive or disengaged from the competitive market, often remaining on high-priced standing offers. Incumbents are able to make very attractive offers to retain customers, effectively through cross-subsidies paid by their inactive customer cohort. This has enabled incumbents to compete only selectively, and with a disproportionate focus on efforts to retain profitable customers rather than to win new ones. In that environment, new entrants and smaller retailers are competing only for the 'active' part of the market which is price sensitive and often low-margin. This model of competition has not delivered a dynamic and competitive market. [4]

When looking at the extent of rivalry to attract or retain customers as IPART intends, it is essential to consider that not all customers are engaged in the competitive retail market. The reports from AEMC and ACCC as well as other reports have highlighted the tendency for consumers to become and remain disengaged from the retail energy market.

This ineffective interaction is particularly relevant for low income and vulnerable consumers, who tend to be the least able to engage and the least able to afford higher energy costs. This lack of engagement may stem from a variety of reasons including being less numerically or financially literate, having a language barrier, or a disability or being on hardship plan or prepayment arrangement which would limit their ability to change retailers.

PIAC is also concerned that the common practice of retailers to provide discounts only when bills are paid by the due date, is essentially a high late payment fee in disguise. Low income and vulnerable consumers often have trouble paying electricity and other bills on time. Therefore, they may miss out on the discount and pay more than they should for their energy services which may then push them further into financial hardship. It is not clear to PIAC whether the fee (that is, the full price in the absence of a discount) accurately reflects any additional costs faced by the retailer as the result of a customer failing to pay on time.

The concerns and difficulties of vulnerable and low-income households point to a failure of the retail energy market to enable effective interaction by customers who are most in need of the benefits of competition.

PIAC strongly supports IPART explicitly examining the outcomes for vulnerable consumers as one its indicators.

Retail gas

Broadly, the same issues apply across both gas and electricity. However, PIAC is particularly concerned that competition in the NSW gas market is not sufficient to ensure good consumer outcomes.

Unlike electricity, price competition is very new in the gas market. As IPART notes in its information paper, gas prices were only deregulated on 1 July 2017, meaning that the market has had little time to develop. This is evident from the number of active gas retailers in NSW. Recently, the AEMC found that there are only 12 retail gas brands operating in NSW, compared

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4 ACCC, *Retail Electricity Pricing Inquiry, Final Report*, July 2018, xi.

with 28 retail electricity bands.[5] Furthermore, the ACCC has found that “retail market shares are still dominated by Origin, AGL and EnergyAustralia”.[6] In such a concentrated market, PIAC is concerned that there is little incentive for retailers to innovate or compete on price, as they do not face the competitive pressures associated with regular customer switching.

Further, efficient pricing is more dependent on effective retail competition under the Australian gas regulatory system than its electricity counterpart. While electricity networks have their charges limited through revenue cap regulation, gas pipelines are regulated under a ‘negotiate-arbitrate’ model of access regulation.[7] This system relies on retailers to negotiate efficient access charges with pipeline operators, which are then passed on to consumers.

As noted by the AEMC, small consumers are currently somewhat protected from this system because distribution networks are mostly regulated under ‘full regulation’ access arrangements, where AER-determined ‘reference prices’ serve as a de facto price cap.[8] However, gas distribution businesses are increasingly arguing that they should have either lighter regulation, or no regulation at all, applied due to the increasing competition gas faces from all-electric homes. Recently, regulatory coverage of the Wagga Wagga Gas Distribution Network was revoked[9] and Jemena Gas Network has flagged it may attempt to follow suit in the next decade.

Without full regulation, the price paid by consumers is fully dependent on retailers negotiating efficient access charges with monopoly pipeline operators. As noted in PIAC’s submission to the AEMC’s pipeline regulation review, retailers have limited incentive to negotiate effectively on behalf of consumers in a market where the bulk of gas is supplied from a small number of retailers that can pass inefficient costs through to consumers without the threat of consumers switching in great numbers.[10]

Therefore, it is imperative that retail gas competition in NSW improves to drive retailers to negotiate efficient pipeline access charges and protect consumers from monopoly pricing by pipeline operators.

Further engagement

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

Yours sincerely,

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5 AEMC, *2018 Retail Energy Competition Review*, June 2018, 215.
6 ACCC, *Inquiry into the east coast gas market, Final Report*, April 2016, 151.
7 AEMC, *Review into the scope of economic regulation applied to covered pipelines, Draft Report*, 32.
8 Ibid.
9 National Competition Council, *Revocation of coverage of the Wagga Wagga natural gas distribution network*, 2014.
10 PIAC, *Submission to the AEMC Review into the scope of economic regulation applied to covered pipelines, Draft Report*, March 2018.