



22 February 2008

By email: khayen.prentice@esc.vic.gov.au

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Level 2, 35 Spring Street
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Dear Khayen

Retailer of Last Resort Customer Charges – Draft Decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide a submission to the Essential Services Commission's (the ESC) *Retailer of Last Resort Customer Charges – Draft Decision* (the **Draft Decision**).

We support the Commission's decision to deny each of the host retailers' proposed Retailer of Last Resort (**RoLR**) customer charges.

We do not, however, support the Commission's proposed RoLR customer charges and, in particular, the decision to increase the supply fee that would be charged to customers being transferred to a new retailer upon a RoLR event. It is our view that any supply fee is manifestly unfair to consumers and we categorically oppose the imposition of a supply fee on domestic or small business customers upon a RoLR event.

We note that the Commission's decision to review the RoLR customer charges is in the context of the first retailer failure in Australia's energy market. It deeply troubles us that, in this instance, the supply fee could have been charged when it appears the retailer in question, Energy One, was able to make a significant profit upon leaving the market. We do not accept that Energy One's withdrawal relates to its inability to pass on rising wholesale prices to consumers, as it has suggested.¹ Rather, it is our view that the failure of Energy One possibly relates to poor business practices, such as not adequately hedging against the risk of rising wholesale prices. Alternatively, we are concerned that Energy One's withdrawal was strategic – and that it saw profits to be made through the on-selling of its hedge contracts. Its ability to continue trading and focus its activity on its marketing of billing

¹ See statement on Energy One's website, www.energyone.com.au, accessed 27 June 2007.

software system suggests that it was not pushed to withdraw from the market due to solvency concerns. In such a situation, it is manifestly unfair for consumers to end up paying a supply fee to a new retailer, when a failed retailer is able to leave the market and make a profit.

Further support for our position on the RoLR supply fee is detailed below.

Commission's assessment criteria

The assessment criteria that the Commission states it has used to guide its Draft Decision were first outlined in its 2006 final RoLR scheme decision. We believe that the Commission has failed to adequately consider these assessment criteria. Specifically, the Commission has failed to consider:

- **Assessment criteria 3:** that customer charges represent a fair price and the scheme protects the interests of customers. We question the fairness in the RoLR recovering 'the cost it incurs', when the customer is forced to change retailer through no fault of their own; and
- **Assessment criteria 6** that the scheme 'insulate customers from volatility in wholesale prices'. We suggest that the imposition of a supply fee is just pushing the risk of such volatility onto consumers.

We also believe that the imposition of the supply fee will inhibit competition in the retail energy market (we note that an objective of the Commission is to facilitate effective competition²). Consumers, faced with being charged the supply fee should their retail fail, may rationally not wish to switch, for fear of the supply fee being imposed at some time in the future. The fee is so large that it could wipe out any contractual savings that they might obtain from switching.

Costs borne by consumers for retailer failure

The most significant imbalance of fairness is in the imposition of the supply fee on consumers following a market failure that is of no fault of their own. In its Draft Decision, the Commission describes the supply fee as the:

simplest mechanism for local retailers to recover from RoLR customers the additional wholesale energy and retail operating costs above those already incorporated in the standing offer.³

We do not support the proposition that the simplest mechanism should be adopted, but that the mechanism should be fair for all market participants. The supply fee, at its current rate or with the proposed increase, presents a significant cost to one class of consumers (consumers of the failed retailer). The supply fee is also particularly harmful for low income and vulnerable consumers, who have limited flexibility in allocation of finances for utilities.

² *Essential Services Commission Act 2001*, section 8(2)(d).

³ Essential Services Commission, *Retailer of Last Resort Customer Charges, Draft Decision*, February 2008, Pg.5

Offset customer acquisition costs

We do not accept the need for retailers to impose a supply fee on consumers to recover wholesale energy costs and retail operating costs, on the basis that the cost of acquiring a customer through a RoLR event is well and truly offset by the fact that the retailer doesn't have to incur the usual customer acquisition costs. As submitted to the Australian Energy Market Commission's, *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria*, First Draft Report, retailers reported that:

average acquisition cost for a domestic customer is between \$136 to \$137 and for a small business customer ranges between \$217 to \$250.⁴

If retailers do not have to pay such acquisition costs to obtain a customer as part of a RoLR event, then we see no reason why they should be entitled to any additional supply fee. In fact, it would seem that there is a case for refunding some of this amount to a customer who has been transferred.

Existing host retailer infrastructure

We understand there are costs involved in connection, supply and network availability. We also understand that the three current host retailers have held these obligations for some time and have therefore built into their contingency plans the capability to monitor the market effectively, allocate hedge funds to cover supply and wholesale costs, where available, and have the systems (billing) and scalable infrastructure to cope with the increase in customer numbers. As noted by the Commission,

The RoLR has already invested significant resources in developing its existing data and retail systems⁵.

As such, we do not believe that the case has been made for the need for extra funds.

Proposed alternative

We are not convinced there is sufficient evidence or justification in retailers receiving a supply fee from consumers at the time of a RoLR event.

If, however, costs are incurred by retailers who act as a RoLR, we propose the government consider establishing a managed fund that all retailers contribute to, that will be drawn upon at the time of the RoLR event. These funds could be used specifically to recover the costs of increased wholesale energy prices and other costs, should they be incurred by retailers. We believe this to be an equitable solution for all stakeholders.

⁴ Australian Energy Market Commission, *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria – First Final Report*, Pg 70

⁵ Essential Services Commission, *Retailer of Last Resort Customer Charges Draft Decision*, February 2008, Pg.11

Should you have any questions, please contact me on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner
Senior Policy Officer