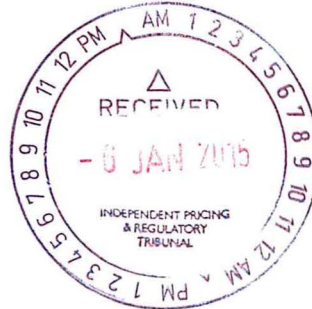


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File No



Reference: A1436136

23 DEC 2015

Mr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Refer

Dear Mr Boxall

Thank you for your letter of 9 December 2015 about the review of early termination fees (ETF) in fixed term retail electricity contracts.

I understand that under Clause 7 of the Terms of Reference for the 'Investigation and report on requirements in relation to early termination charges to be imposed on retailers under the National Energy Retail Rules (NSW)', the Tribunal is required to review the caps set for early termination fees within two years of its initial decision, i.e. by 20 December 2015.

I agree with your advice that the review of early termination fees is not necessary at this time because there is sufficient competition in the market, which is providing a better form of protection for customers than the regulation of ETF caps.

I therefore enclose a revised Terms of Reference to confirm the Tribunal is required to review early termination fees for fixed term electricity contracts by 20 December 2017.

Yours sincerely



MIKE BAIRD MP
Premier

TERMS OF REFERENCE

Investigation and report on requirements in relation to early termination charges to be imposed on retailers under the National Energy Retail Rules (NSW)

I, Michael Baird, Premier of New South Wales, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992 (Act)*, refer the following matter to the Independent Pricing and Regulatory Tribunal (**Tribunal**) for investigation and report:

1. The Tribunal is to specify an amount or amounts for small customers for the purposes of rules 49AA(2) and 49AA(3) of the National Energy Retail Rules (as modified by the *National Energy Retail Law (Adoption) Regulation 2013 (National Energy Retail Rules (NSW))* and which apply in NSW in accordance with the *National Energy Retail Law (Adoption) Act 2012 (NSW)*).
2. The Tribunal may specify a different amount for the early termination of:
 - (a) a fixed term market retail contract for the sale of electricity;
 - (b) a fixed term dual fuel contract in relation to the sale of electricity; and/or
 - (c) a fixed benefit period of:
 - (i) a market retail contract for the sale of electricity; and/or
 - (ii) a dual fuel contract in relation to the sale of electricity.
3. In deciding the relevant amount or amounts to be specified, the Tribunal must take into account the following matters:
 - (a) the amount or amounts must reflect a retailer's reasonable costs of giving effect to the early termination of a market retail contract or fixed benefit period under a market retail contract (as the case may be);
 - (b) the amount or amounts must not include an estimate of costs based on lost supply and lost profits; and
 - (c) the amount or amounts must not include an estimate of inducement costs (as defined in rule 49AA(4) of the National Energy Retail Rules (NSW)),
4. In deciding the amount or amounts to be specified for the purposes of rules 49AA(2) and 49AA(3), the Tribunal must consider any potential impacts on consumer prices and on competition in the relevant retail markets.
5. The Tribunal may take into account any other matters the Tribunal considers relevant, including possible regulatory impacts.
6. The Tribunal must review the amount or amounts specified in its report 'Early Termination Fees' dated December 2013 made under section 12A of the Act for the purposes of rules 49AA(2) and 49AA(3) of the National Energy Retail

Rules (NSW) by 20 December 2017 or by a subsequent date as advised by the Premier.

7. The Tribunal must carry out any review under paragraph 6 in accordance with paragraphs 2 to 5 and must consult with stakeholders and publicly release a report.
8. These terms of reference amend and replace the terms of reference dated 17 July 2013 previously issued under section 12A of the Act to the Tribunal.