



Office of the Tasmanian Economic Regulator

**Consultation Paper on proposed changes to the
Interim Price-Regulated Retail Service Price
Determination**

February 2014

Printed February 2014

Office of the Tasmanian Economic Regulator

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ISBN 978-0-7246-5272-3

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1 EXECUTIVE SUMMARY

Amendments have been proposed to the *Aurora Energy Pty Ltd - Interim Price-Regulated Retail Service Price Determination* (the Determination) to rectify an unintended consequence arising from changes made to the regulatory framework governing the approval of standing offer electricity prices and charges.

The amendments, if approved, will restore the situation that existed for many years with respect to Aurora Energy's ability to impose a late payment fee and interest on overdue accounts.

The Regulator is seeking comments on the proposed amendments.

2 BACKGROUND

On 29 July 2013 the Regulator made the Interim Price-regulated Retail Service Price Determinations to apply for the interim pricing period 1 January 2014 to 30 June 2016 (2013 Standing Offer Determinations). Two determinations were required, reflecting the Government's intention at that time to sell Aurora Energy's existing customers in two separate bundles. As the two Regulated Offer Retailers were not known at that time, the Regulator's determinations refer to Retailer A with respect to Customer bundle 1 and to Retailer B with respect to Customer bundle 2.

Following the Tasmania Government's changes to its electricity reform program (i.e. deciding not to sell Aurora Energy's customers and delaying the commencement of full retail competition until 1 July 2014), on 6 December 2013 the Regulator amended the determination for Retailer A so that it applied to Aurora Energy and to the entire small customer base. The amended determination was titled *Aurora Energy Pty Ltd - Interim Price-Regulated Retail Service Price Determination* (the Determination). At the same time the Regulator revoked the determination for Retailer B.

The Regulator approved Aurora's standing offer prices on 20 December 2013 after confirming that the standing offer prices were calculated in a manner that was consistent with the Determination.

As a part of the approval of standing offer prices, Aurora Energy sought approval for the late payment fee it charges customers who do not pay their bills on time. This fee and the interest on overdue accounts, are charges that Aurora Energy has had the authority to charge since 1998. However, during the standing offer price approval process in December 2013 it became apparent to the Regulator that, under the new legislative framework stemming from the Government's energy reform process, the Regulator did not have the power to approve the late payment fee nor did Aurora Energy have the legislative power to impose this fee. Aurora Energy subsequently raised the related issue of its ability to charge interest on overdue accounts in the request it made to the Regulator with respect to amending the Determination.

Aurora Energy has subsequently requested the Regulator to amend its Determination so that it can legally continue to impose these charges.

This paper presents the case for amending the Determination to include:

- the late payment fee; and
- interest on overdue accounts,

and considers whether the Determination should be altered in any way to address the proposed changes.

Specifically:

- Chapter 2 presents the legal framework for making changes to a Determination;
- Chapter 3 presents the background to Aurora Energy's requested change;
- Chapter 4 considers whether the Determination should be amended as proposed in Chapter 3 with respect to the legal framework presented in Chapter 2;
- Chapter 5 presents the changes to the Determination the Regulator proposes based on the analysis from Chapter 4 and seeks stakeholders' feedback on those proposed changes; and
- Chapter 6 discusses the likely implications for standing offer prices if the proposed changes are made.

It should be noted that on 15 January 2014 Aurora Energy implemented the necessary changes to its billing system to stop charging the late payment fee and interest on overdue accounts. Aurora Energy has undertaken to refund any monies collected through the imposition of these charges during the period 1 January 2014 to 15 January 2014.

This document should be read in conjunction with the 2013 Standing Offer Determinations made on 29 July 2013; the amended Determination released on 6 December 2013¹ and the Regulator's *Report on investigation of maximum prices for interim price-regulated electricity retail services for small customers on mainland Tasmania*, July 2013.²

¹ The amended determination is available at:

[http://www.economicregulator.tas.gov.au/domino/otter.nsf/LookupFiles/134360_134037_2013_Standing_Offer_Determination_Aurora_Energy_6_December_2013.PDF/\\$file/134360_134037_2013_Standing_Offer_Determination_Aurora_Energy_6_December_2013.PDF](http://www.economicregulator.tas.gov.au/domino/otter.nsf/LookupFiles/134360_134037_2013_Standing_Offer_Determination_Aurora_Energy_6_December_2013.PDF/$file/134360_134037_2013_Standing_Offer_Determination_Aurora_Energy_6_December_2013.PDF)

² The Regulator's report is available at:

[http://www.economicregulator.tas.gov.au/domino/otter.nsf/LookupFiles/132523_2013_Standing_Offer_Determinations_-_Report_-_PDF.PDF/\\$file/132523_2013_Standing_Offer_Determinations_-_Report_-_PDF.PDF](http://www.economicregulator.tas.gov.au/domino/otter.nsf/LookupFiles/132523_2013_Standing_Offer_Determinations_-_Report_-_PDF.PDF/$file/132523_2013_Standing_Offer_Determinations_-_Report_-_PDF.PDF)

3 LEGAL FRAMEWORK – MAKING CHANGES TO A DETERMINATION

3.1 Introduction

The *Electricity Supply Industry (Pricing and Related Matters) Regulations 2013* (Pricing and Related Matters Regulations) govern the making of changes to an existing electricity price determination.

Specifically, the Pricing and Related Matters Regulations give the Regulator the power to amend or revoke a determination; set out the conditions under which a determination may be amended or revoked; and detail the process that must be followed by the Regulator before amending or revoking a determination.

3.2 Circumstances under which a determination may be changed

Under Regulation 17(2) of the Pricing and Related Matters Regulations:

(2) The Regulator may amend or revoke a price-regulated retail service price determination under section 40AA(3) of the Act if the Regulator determines –

(a) that the determination was made on the basis of information, provided by the regulated offer retailer to which the determination relates, that was false or misleading in a material particular; or

(b) that there is a material error in the determination; or

(c) that –

(i) the regulated offer retailer to which the determination relates is materially adversely affected by the determination as a result of an event which is beyond the retailer's reasonable control and was not taken into account in the terms of the determination; and

(ii) the benefits of amending or revoking the determination would outweigh any detriment, to the regulated offer retailer to which the determination relates, or any customer of such a retailer, that might result from the amendment or revocation of the determination.

The following chapters present details about Aurora Energy's requested change and assesses whether any of the criteria outlined in Regulation 17 of the Pricing and Related Matters Regulations have been met such that amendment of the Determination is warranted. In particular the assessment has been made with reference to Regulation 17(2)(c) of the Pricing and Related Matters Regulations.

The Regulator has no reason to believe that the criteria in Regulation 17(2)(a) and 17(2)(b) of the Pricing and Related Matters Regulations

have been breached and therefore has not considered those provisions on this occasion.

Should the Regulator consider that any of these criteria are met and an amendment is therefore warranted, the Regulator must follow the process outlined below in section 3.3 before amending the Determination.

3.3 Process to be followed when proposing changes to a determination

Under Regulation 18 of the Pricing and Related Matters Regulations the Regulator must adopt the following process before amending or revoking a determination:

18. Process for amendment or revocation

(1) Before amending or revoking under section 40AA(3) of the Act a price-regulated retail service price determination, the Regulator is to invite submissions in respect of whether the determination ought to be amended or revoked.

(2) The invitation referred to in subregulation (1) is to –

(a) be in writing; and

(b) specify a reasonable period within which the submissions may be made.

(3) The Regulator is to –

(a) give a copy of the invitation to –

(i) the Minister; and

(ii) the regulated offer retailer to which relates the price-regulated retail service price determination that the Regulator is considering amending or revoking; and

(b) publish a copy of the invitation in the daily newspapers that the Regulator considers appropriate.

(4) The Regulator is only to amend or revoke under section 40AA(3) of the Act a price-regulated retail service price determination –

(a) after the expiry of the period within which submissions may, under the invitation referred to in subregulation (1), be made in relation to the determination; and

(b) after considering any such submissions received.

(5) Subject to these regulations, for the purpose of determining whether or not to amend or revoke a price-regulated retail service price determination under section 40AA(3) of the Act, the Regulator may do any or all of the following:

(a) consult with any person;

(b) hold seminars;

(c) hold hearings;

(d) do anything the Regulator considers necessary or convenient.

(6) In determining whether or not to amend or revoke under section 40AA(3) of the Act a price-regulated retail service price determination, the Regulator is not bound by the rules of evidence but may inform itself in any manner the Regulator considers appropriate.

(7) If the Regulator decides to hold a hearing for the purpose of determining whether or not to amend or revoke under section 40AA(3) of the Act a price-regulated retail service price determination, regulation 50 applies as if the hearing were a hearing in respect of a pricing investigation.

(8) Regulations 51 and 52 apply in relation to the determining by the Regulator of whether or not to amend or revoke under section 40AA(3) of the Act a price-regulated retail service price determination, as if the Regulator were conducting a pricing investigation.

4 WHAT ARE THE PROPOSED CHANGES?

Aurora Energy has requested the Regulator amend the Determination so that Aurora Energy can continue to impose the late payment fee and charge interest on overdue accounts.

As discussed in Chapter 1, during the standing offer price approval process that took place after the 2013 Standing Offer Determinations were amended in December 2013, Aurora Energy sought approval to continue to charge its late payment fee. The matter of interest on overdue accounts was not raised as part of Aurora Energy's pricing proposal but was subsequently raised by Aurora Energy in its request to the Regulator to consider amending the Determination to include both the fee and the interest charge.

After considering comments provided by the Regulator's Customer Consultative Committee, the then Regulator³ approved, on 30 September 1998, the charging of a late payment fee of five dollars and interest at the then Commonwealth Bank of Australia Corporate Overdraft Reference Rate of 9.7 per cent.

Both charges were permitted under Regulation 17 of the then *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tariff Customers Regulations) and were approved as part of the Regulator's approval of Aurora Energy's Standard Tariff Agreement which was required under Regulations 5 and 6 of those Regulations.

The former Regulation 17 provided as follows:

17 Interest on overdue accounts

It is a condition of electricity sale and supply that, on a basis approved by the Regulator, an electricity retailer may –

- (a) Impose charges for late payment by a tariff customer if the amount due to the electricity retailer for electricity sold and supplied is not paid by the due date for payment fixed in the relevant electricity account; and
- (b) Charge the tariff customer interest on that amount from the due date until the date of payment.

As part of the reforms associated with the adoption of the National Electricity Customer Framework (NECF) in Tasmania from 1 July 2012, the Tariff Customers Regulations, and therefore the specific authority to charge late payment fees and interest on overdue accounts, was removed.

³ The Tasmanian Electricity Regulator.

In place of the Tariff Customers Regulations, more prescriptive provisions were placed in the ESI Act with respect to the approval of regulated prices and charges that apply from 1 January 2014. Specifically, Section 40(2) of the ESI Act states that except under a market retail contract, a regulated offer retailer must not sell, or offer to sell, electricity to a small customer at a price or require payment of a charge unless the price or charge is a standing offer price.

Additionally, under section 41(4) of the ESI Act, the Regulator may only approve the draft standing offer prices if the prices are in accordance with the pricing structure i.e. the pricing structure which is specified in the determination.

The current pricing structure in the Determination does not mention the late payment fee or the interest on overdue accounts. Given this, the Regulator cannot approve those charges as standing offer prices and, consequently, Aurora Energy cannot impose those charges on its regulated customers.

Aurora Energy has therefore requested the Regulator consider amending the Determination to include Aurora Energy's late payment fee and interest on overdue account in the pricing structure of the determination. Specifically, this would require amendment to Schedule 1 of the Determination to include both the late payment fee and the interest on overdue accounts as separate charges in the pricing structure.

It is important to note that the proposed changes to the Determination are in no way related to the premise or quantum of the late payment fee or the interest charge both of which have been subject to public consultation in the past. Rather it is a proposal to correct a technical anomaly to allow these charges to continue to be applied on the same basis as was previously approved.

The next chapter considers whether these changes should be made having regard to the legal criteria outlined in section 3.2.

5 SHOULD THE DETERMINATION BE AMENDED?

5.1 Introduction

This Chapter considers the impact of the amendments proposed by Aurora Energy and whether the Determination should be amended having regard to the legal framework outlined in Chapter 2 and the description of the requested changes set out in Chapter 3.

Specifically, in assessing whether to amend the Determination under Regulation 17(2)(c) of the Pricing and Related Matters Regulations the Regulator is to consider whether:

- Aurora Energy is materially adversely affected by an event;
- the event was beyond Aurora's Energy control;
- the event was taken into account in the terms of the Determination; and
- the benefits of amending the determination would outweigh any detriment to Aurora Energy or its customers that might result from the amendment of the Determination.

These criteria are assessed in sequence below.

5.2 Is Aurora Energy materially adversely affected by the event?

Aurora Energy considers that the level of revenue that it would forgo is significant and assists it in managing the cost of credit management related tasks including the build up of bad-debt or the cost of developing new tools to highlight repayment requirements such as text-messaging. In 2013 Aurora Energy collected approximately \$0.67 million in late payment fees and just under \$1.16 million in interest on overdue accounts.

Table 4.1 presents the impact on Aurora Energy of the potential lost revenue if it could not charge the late payment fee and interest on overdue accounts using three different measures. The most relevant of those measures is presented in the fourth column which is the combined annual total of the late payment fees and interest on overdue accounts as a percentage of Aurora Energy's retail margin allowance. This is because if Aurora Energy is not permitted to charge these fees the lost revenue associated with these fees would need to be funded through the retail margin. Based on its analysis, the Regulator considers that, based on the percentages presented (between 6.67 per cent and 8.48 per cent per period), the impacts are material. The Regulator therefore considers Aurora Energy is materially adversely affected by its inability to impose the late payment fee and charge interest on overdue accounts.

Table 4.1 Impact on Aurora Energy due to inability to impose late payment fees and interest on overdue accounts

Period	Percentage of NMR	Percentage of controllable costs	Percentage of retail margin
Period 1	0.39	3.78	8.48
Period 2	0.36	2.90	6.70
Period 3	0.36	2.87	6.67

5.3 Is the event beyond Aurora Energy's control?

As discussed in Chapter 3 the repeal of the Tariff Customers Regulations removed Aurora Energy's ability to impose the late payment fee and charge interest on overdue accounts from 1 January 2014.

As also noted in Chapter 3 the only way Aurora Energy would be legally able to impose the late payment fee and charge interest on overdue accounts is if these changes are included in the Determination's pricing structure. The Determination's current pricing structure, as specified in the Government's submission to the Regulator in May 2013, does not include the late payment fee or the interest on overdue accounts.

Given this, the exclusion of these charges from the Determination was outside Aurora Energy's control.

5.4 Did the Determination take account of the event?

As discussed in section 5.3, the Determination did not take account of the late payment fee and interest on overdue accounts and were previously managed outside the determination process.⁴

5.5 Do the benefits of amending the Determination outweigh any detriment to Aurora Energy or its customers?

Aurora Energy has noted to the Regulator that, as a credit management tool, the late payment fee is one of the longstanding mechanisms it has in place to encourage customers to make payment on their bills. Whilst there are a suite of mechanisms, such as reminder notices and the possibility of disconnection, Aurora Energy recognises that different incentives are required to motivate a wide range of its customers. The late payment fee is in this regard a credit management tool although a generally less punitive tool when compared to the loss of supply through disconnection. Aurora Energy also considers that customers require such signals to highlight the risks they face in building up debt. A late payment fee is also an early indicator to a customer that they may be facing payment difficulties. It is Aurora Energy's preference to retain early debt-build up indicators for customers to

⁴ See Tasmania Economic Regulator, Report on investigation of maximum prices for interim price-regulated electricity retail services for small customers on mainland Tasmania, July 2013.

avoid the instances of large debt build up and possible disconnection. As such, the loss of any early debt indicator like the late payment fee has the ability to impact both Aurora Energy and its customers.

In conjunction with the late payment fee, the interest on overdue accounts is designed to compensate Aurora Energy for the interest charge it likely incurs on borrowings (when customers do not pay on time) to fund the costs it has incurred to serve customers.

The Regulator notes that the late payment fee and the interest on overdue accounts are charges that Aurora Energy's customers have faced since 1998. The proposal to amend the determination reinstates the legal authority for Aurora Energy to continue to impose these charges. In this sense customers will not be impacted by the amendment to the determination as the previous situation will be restored.

Furthermore, Aurora Energy is not proposing changes to the quantum of the late payment fee or the methodology for calculating interest on overdue accounts.

5.6 Regulator's conclusion

Based on the preceding discussion, the Regulator considers that, in accordance with Regulation 17(2)(c)(i) of the Pricing and Related Matters Regulations, Aurora Energy will be materially adversely affected by the determination as a result of an event which is beyond the retailer's reasonable control and was not taken into account in the terms of the determination.

Furthermore, consistent with Regulation 17(2)(c)(ii) of the Pricing and Related Matters Regulations the Regulator considers that the benefits of amending the determination would outweigh any detriment to Aurora Energy, or any of Aurora Energy's customers, that might result from the amendment of the determination.

The Regulator has therefore concluded that the conditions for amending the determination have been met.

The next chapter discusses the amendments that the Regulator proposes to make to the Determination.

5 PROPOSED AMENDMENTS TO THE DETERMINATION

5.1 Introduction

As discussed in the previous chapter, the Regulator proposes amending the Determination.

Regulation 18 of the Pricing and Related Matters Regulations, as outlined in section 3.3, outlines the process the Regulator is to follow when amending a determination.

This chapter outlines the proposed amendments to the Determination based on the analysis in the previous chapters and, in accordance with Regulation 18 of the Pricing and Related Matters Regulations, requests input from stakeholders on the proposed amendments.

5.2 Regulator's proposals – amendments to the Determination

Based on the conclusions noted in section 5.6, the Regulator proposes:

- adding a new heading - “Table 8: Prices” - to the existing table in Schedule 1 (Standing Offer Price Structure) of the Determination;
- inserting a new table - “Table 9: Charges” - in Schedule 1 (Standing Offer Price Structure) of the Determination;
- in the new Table 9, outlining the title of each charge, a description of each charge, the late payment fee amount and the methodology for calculating interest on overdue accounts;
- inserting an additional sentence in Part 2 of the Determination under the heading “Maximum Price” to ensure that the calculation of standing offer prices for standard retail services (Table 8 of Schedule 1) is not impacted by including the late payment fee and interest on overdue accounts in the pricing structure; and
- in Part 3 of the Determination, renumbering Table 8 as Table 10 to reflect the insertion of Tables 8 and 9 and amending clause 9 so as it refers specifically to Table 8 in Schedule 1 rather than to Schedule 1 as is currently the case.

The Regulator seeks comments on its proposal to amend Schedule 1 of the Determination to include the late payment fee and interest on overdue accounts.

Notes:

- 1. the Regulator is not seeking comments on the appropriateness of Aurora Energy imposing a late payment fee or the amount of that fee as the Regulator took account of comments made by its Customer Consultative Committee prior to approving the imposition of the fee. The imposition of the late payment fee was also subject to public consultation in 2005.**

- 2. the Regulator is not seeking comments on the appropriateness of Aurora Energy charging interest on overdue accounts or the rate of interest charged as the Regulator took account of comments made by its Customer Consultative Committee in respect of this issue prior to approving the charging of interest.**

6 WHAT IS THE EXPECTED IMPACT ON PRICES?

As discussed in section 5.3 the late payment fee and the interest on overdue accounts are charges that Aurora Energy's customers have faced for many years. The proposal to amend the Determination reinstates the legal authority for Aurora Energy to continue to impose these charges. Additionally, Aurora Energy is not proposing to change the quantum or method for calculating either of these charges. In this sense the proposed amendment to the Determination will not impact on customers compared to the situation that prevailed up to 31 December 2013.

The Regulator also notes that these charges are separate to the standing offer prices approved by the Regulator on 20 December 2013. The proposed amendments to the Determination do not, therefore, impact on standing offer prices.

This issue with the ability to levy the late payment fee was only identified in late December 2013. As such Aurora Energy did not have sufficient time to make the necessary changes to its billing system to prevent the charging of late payment fees and interest on overdue accounts from 1 January 2014. The charging of these items ceased from 15 January 2014. As noted in Chapter 1, as part of Aurora Energy's compliance arrangements, Aurora Energy will refund any late payment fees or interest on overdue accounts charged between 1 January 2014 and 15 January 2014 so no customers are disadvantaged.

If reinstated the charges will apply from the date of the Regulator's approval i.e. the charges will not apply retrospectively from 1 January 2014.

7 RESPONDING TO THE REGULATOR'S PROPOSALS

The Regulator invites written comments on the proposals outlined in this consultation paper. Submissions will be considered prior to the proposed Determination being finalised and must be received by the close of business on Wednesday 26 February 2014.

It is normal practice for all submissions to be published on the Regulator's website unless the author of the submission requests confidentiality in relation to the submission (or any part of the submission). Those parts of a submission that are requested to be kept confidential should be submitted as an attachment to that part suitable for publication.

The Regulator will not publish submissions which contain material that the Regulator believes is, or could be, derogatory or defamatory.

If you would like further information on the treatment of confidential submissions, please refer to the Economic Regulator's *Policy on the treatment of confidential submissions* document on its website.

Submissions by email are preferred to assist in publishing submissions on the website.

Submissions and enquiries may be made to:

office@economicregulator.tas.gov.au

or to

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A copy of the proposed Determination and this Consultation Paper may also be found on the Economic Regulator's website: www.economicregulator.tas.gov.au