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Research &
Information Paper

ELECTRICITY DISTRIBUTOR LEVY

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Preface

The Electricity Distributor Levy was introduced in NSW in the 1997-98 State Budget. The Levy was applied by the Government to the State's six electricity distributors. To raise the revenue to pay the Levy, electricity distributors were required to increase their network service charges to large consumers of electricity (those spending approximately \$75,000 on electricity annually) from 29 June 1997. This change in electricity pricing was confined to customers who were eligible to become contestable in the retail electricity market and therefore had the opportunity to offset the impact of the network charges through expected lower negotiated energy prices.

Recognising that this was the first time such a levy had been developed and applied in Australia, Treasury closely monitored the impact of its introduction from both a fiscal and economic point of view.

The 1998-99 Budget made several modifications to the levy arrangements. First, customers using more than 160 MWh of electricity annually who become eligible to enter the retail electricity market from 28 June 1998 will pay the higher network service charges when they actually become non-franchise customers (ie when they move from regulated tariffs to competitively set prices). Second, the network service charge payable by non-franchise customers will be 0.52 cents per kilowatt hour above the maximum network service charge determined by the Independent Pricing and Regulatory Tribunal. Previously, this was 0.55 cents per kilowatt hour above the maximum charge determined by the Independent Pricing and Regulatory Tribunal. Third, a Transmission Operator's Levy, comparable to the Electricity Distributor Levy, was introduced. The impact on customers connected to the transmission system will be the same as those connected to the distribution system.

This Research and Information Paper is the second edition prepared by NSW Treasury to assist electricity distributors implement and administer the Electricity Distributor Levy and the 0.52 cents per kilowatt hour increase in network service charges to non-franchise customers, arising from amendments to the *Electricity Supply Act 1995*. This edition has been revised to take into account changes to the operation of the levy announced in the 1998-99 Budget and addresses how this will apply to the customers using between 160 MWh and 750 MWh of electricity annually.

Electricity retail suppliers, who in most cases will be billed by the distributors or the transmission operator for network service charges in the first instance, and those electricity customers affected by the increase in network service charges, may also find the information useful.

John Pierce
Secretary
NSW Treasury
September 1998

Contents

Preface

Executive Summary

Important Disclaimer

Terminology

Effective Dates

Who Pays the Increased Network Service Charge and When?

Differential Network Prices

Exemption from the Network Price Increase

Inter-jurisdictional Supply

Private Networks and Embedded Generation

Further Information

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Treasury
[Tel: 9228 3208]. This publication can be accessed from the Treasury's Office of Financial
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Publications Officer on Tel: 9228 4426.

Executive Summary

The 1997-98 State Budget introduced an Electricity Distributor Levy. The Levy was facilitated through the passage of the *Electricity Supply Amendment Act 1997*.

The *Electricity Supply Amendment Act 1997* contained two components. The first was a Levy applied by the Government to the six NSW licensed distributors, which came into effect on 1 July 1997. The second was an electricity price increase of 0.55 cents per kilowatt hour for customers who are defined as 'eligible'. This came into effect on 29 June 1997, or when the customer will become eligible, whichever is the later.

Eligibility was defined in terms of orders made by the Minister for Energy under Section 92 of the *Electricity Supply 1995* to declare particular customers non-franchise, based on the customer's usage of electricity. From 29 June 1997, these were customers that consumed more than 750 MWh of electricity per annum (or about \$75,000).

The 1998-99 State Budget introduced several modifications to the levy arrangements. These changes were facilitated through the passage of the *Electricity Supply Amendment (Transmission Operator's Levy) Act 1998*.

First, the *Act* imposed levy arrangements on transmission operators, comparable with the levy arrangements imposed on Electricity Distributors.

Second, the *Act* limited a maximum price increase for the provision of electricity network services set by the Governor above the pricing determination of the Independent Pricing and Regulatory Tribunal, from exceeding 0.55 cents per kilowatt hour. The effect is that the 0.55 cents per kilowatt hour network price increase previously provided in the *Electricity Supply Act* is now set as a maximum.

Third, the *Act* enabled the Governor, by order made on the recommendation of the Treasurer, to determine a network price increase less than the maximum. Such an order was made on 22 July 1998, setting the price increase for the provision of electricity network services that may be permitted above the pricing determination of the Independent Pricing and Regulatory Tribunal at 0.52 cents per kilowatt hour.

Fourth, the concept of an 'eligible' customer has been replaced with the concept of a 'non-franchise' customer. The effect of this change is that the network price increase will only apply when customers actually become non-franchise. A non-franchise customer is able to purchase electricity from the retail supplier of its choice at freely negotiated prices.

This Research and Information Paper explains how the Section 92 orders work and, consequently, which customers are liable to pay the increase in electricity charges.

Important Disclaimer

This document has been published as a guide for the users of electricity services. It is not a definitive statement of law and should not be used or relied upon as a substitute for legal advice or advice of any kind. To the fullest extent permitted by law, neither the Government of New South Wales, nor the servants, employees or agents of them, as the authors, consultants and editors of this document, undertake any duty of care to anyone nor assume or accept any liability or responsibility of any kind to any person who relies on this document and who suffers loss, injury or damage of any kind as a result.

Terminology

The Electricity Distributor Levy and the Transmission Operator's Levy arrangements comprise two components.

The first is an Electricity Distributor Levy charged by the Government on licensed electricity distributors (there are six licensed distributors in NSW). The levy is a lump sum amount (or amounts) determined by the Treasurer using criteria spelt out in the *Electricity Supply Act*. Similarly a Transmission Operator's Levy is charged by the Government on transmission operators in NSW.

The second is a network price increase of 0.52 cents per kilowatt hour charged by the distributor to its non-franchise customers (or by the transmission operator to its direct customers). This is an increase in an existing component of the customer's electricity bill - the network use of system charge - and will appear within those charges.

Effective Dates

1997-98: 0.55 cents per kilowatt hour increase

The *Electricity Supply Amendment Act 1997* received assent on 25 June 1997. The *Electricity Supply Amendment Act 1997* [Section 32B(3)] states that the effective commencement date for the Electricity Distributor Levy is 1 July 1997. This commencement date applies to the levy on distributors only.

The date from which the 0.55 cents per kilowatt hour price increase in network service charges applied to eligible customers was 29 June 1997. That was specified in an order of the Governor made under Section 43E(5). That aligned with the eligibility of 750 MWh pa customers to enter the competitive retail market and also aligned with weekly settlements in the wholesale market. The price increase applied from the first customer billing period commencing on or after 29 June 1997 with respect to electricity consumed by the eligible customer on or after 29 June 1997.

1998-99: 0.52 cents per kilowatt hour increase

The *Electricity Supply Amendment (Transmission Operator's Levy) Act 1998* received assent on 14 July 1998. The *Electricity Supply Amendment (Transmission Operator's Levy) Act 1998* [Section 43G(3)] states that the effective commencement date for the Transmission Operator's Levy is 1 July 1998.

The price increase in network services charges applied to non-franchise customers was reduced from 0.55 cents per kilowatt hour to 0.52 cents per kilowatt hour effective from 28 June 1998. That was specified in an order of the Governor made under Sections 43E(5) and 43N(1). That date aligned the eligibility of 160 MWh pa customers to enter the competitive retail market with weekly settlements in the wholesale market.

Who Pays the Increased Network Service Charge and When?

The amendment to the *Electricity Supply Act* that changed the incidence of the increase in the network service charge from 'eligible' customers to 'non-franchise' customers is an important change in the application of the levy arrangements.

A 'non-franchise customer' (and therefore liability for the network price increase) is now defined in the *Electricity Supply Act 1995* in terms of a customer meeting the criteria for non-franchise status under the orders issued by the Minister for Energy made under Section 92 of the *Electricity Supply Act 1995*. There is a separate Section 92 order for each of the following customer groups:

- Customers using more than 40 GWh pa (eligible from 1 October 1996 and non-franchise on or before 1 October 1997)
refer NSW Government Gazette 27 September 1996;
- Customers using more than 4 GWh pa (eligible from 1 April 1997 and non-franchise on or before 1 October 1997)
refer NSW Government Gazette 21 March 1997;
- Customers using more than 750 MWh pa (eligible from 29 June 1997 and non-franchise on or before 1 July 1998)
refer NSW Government Gazette 6 June 1997; and
- Customers using more than 160 MWh pa (eligible from 28 June 1998 and non-franchise on or before 1 July 1999)
refer NSW Government Gazette 12 June 1998.

A customer becomes non-franchise upon the earlier of:

- The date specified in the order; or
- An earlier date nominated in a written notice to the local electricity distributor having met one of four criteria relating to electricity consumption set out in the order:
 1. Actual consumption at the customer's premises exceeds the consumption threshold for eligibility.
This is a matter of fact, based on the metered quantities on the customer's electricity invoices.
 2. Actual consumption at the customer's premises plus an allowance of 2%, at the option of the customer, exceeds the consumption threshold for eligibility.
It should be noted that the Section 92 order does not permit a customer to reduce actual consumption by 2% in order to avoid being eligible.
 3. Estimated consumption at the customer's premises exceeds the consumption threshold for eligibility, where an Authorised Officer considers the consumption has not been accurately recorded.
 4. Potential consumption at the customer's premises, as estimated by an Authorised Officer, exceeds the consumption threshold for eligibility.
An example may be where a customer's actual consumption of electricity is below the eligibility threshold but the customer anticipates an increase in consumption. If future consumption is projected to be above the threshold, the customer may apply to have eligibility determined on the basis of projected consumption.

Customers using more than 750 MWh per annum

Customers using more than 750 MWh pa, who were paying the network price increase under the previous 'eligibility' criteria, will continue to pay the network price increase (but at the lower rate) under the current 'non-franchise' criteria since they would be non-franchise by 1 July 1998 at the latest, through the operation of the Section 92 order.

Customers using more than 160 MWh per annum

Customers using more than 160 MWh pa will commence paying the network price increase on the date that they become non-franchise, whether they remain with their local distributor or change retail supplier. Customers in this category who remain franchise to their local electricity distributor will not pay the network price increase until they become non-franchise under the Section 92 order. Customers who choose to remain franchise customers as a means of avoiding paying the network price increase should be mindful of the potential savings in electricity costs they may be forgoing as a result of negotiating as a non-franchise customer.

Of course, customers in the above 160 MWh pa category cannot avoid payment of the network price increase indefinitely, since they will automatically become non-franchise on 1 July 1999.

Aggregation of sites

Where a customer satisfies the criteria under the Section 92 order to aggregate consumption at several of its sites but *does not give notice* to the distributor of its intention to declare itself non-franchise, *the customer remains franchise and therefore not liable for the network price increase*. Liability for the network price increase begins when such notice is given or the site becomes non-franchise under a subsequent Section 92 order.

Transmission customers

By introducing the Transmission Operator's Levy, the Government provides a competitively neutral framework for customers to make decisions on access to transmission or distribution networks. That is, the network pricing regime for customers connected directly to the transmission system is similar to the regime applying to non-franchise customers connected to the distribution system. The Government has removed the economic incentive for electricity customers to bypass the distribution system and connect directly to the transmission system as a means of avoiding payment of increased network charges.

Subject to any exemption (see Exemption from the Network Price Increase section below), a non-franchise customer connected directly to a transmission system will pay a network service charge which is 0.52 cents per kilowatt hour above the maximum price for the provision of electricity network services by a transmission operator determined by the Independent Pricing and Regulatory Tribunal.

Section 92 Orders

The preceding section of the Research and Information Paper presents a precis on non-franchise status and necessarily condenses the contents of the Section 92 orders. To determine non-franchise status in a particular case, reference must be made to the Section 92 orders. The Section 92 orders are available on the Department of Energy's Internet site at <http://www.doe.nsw.gov.au>.

Differential Network Prices

Under the terms of the *Electricity Supply Act*, a customer who meets the criteria to become non-franchise but remains franchise is not subject to the network price increase. This may have an impact upon distributors' billing systems in that two scales of network charges may apply to customers with similar broad load/demand characteristics - a scale for franchise customers and a higher scale for non-franchise customers.

Exemption from the Network Price Increase

Where the original terms of an existing tripartite contract are being honoured, the tripartite contract may be exempt from the network price increase until the expiry of the contract.

Where a tripartite contract has been renegotiated prior to expiry to reallocate revenue shares between the generator, TransGrid and the distributor, the new contract will be assessed by NSW Treasury as to the liability for the network price increase. Sufficient particulars of the contract should be submitted by the distributor or transmission operator to Treasury in order that Treasury can make a recommendation to the Treasurer as to the liability. Information provided will be treated on a commercial in confidence basis.

Sales from one distributor to another distributor will be exempt from the network price increase.

Generators and distributors connected to the transmission operator's transmission system will be exempt from the network price increase imposed by the transmission operator. This avoids 'double-dipping' in applying the price increase.

If a non-franchise customer has a contract with a transmission operator agreed before 1 July 1998 that contains a provision expressly precluding payment of additional charges for electricity network services provided under it, then the additional 0.52 cents per kilowatt hour does not apply.

Alternatively, if a non-franchise customer has an arrangement with a transmission operator agreed before 1 July 1998 that contains a provision expressly precluding payment of additional charges for electricity network services provided under a connection agreement made pursuant to that arrangement, then the additional 0.52 cents per kilowatt hour does not apply.

Inter-jurisdictional Supply

1. Customers located outside NSW connected to a NSW distributor's network.

Customers located outside NSW but connected to a NSW distributor or transmission operator are not subject to the *NSW Electricity Supply Act*. Consequently, customers located outside NSW will not be declared nor can they declare themselves to be non-franchise customers under the terms of Section 92 orders made under the *NSW Electricity Supply Act*. Since the increase in network service charges is only applicable to non-franchise customers, it follows that customers located outside NSW will not be charged the increase in network service charges (except to the extent that NSW law may be subsequently applied to these customers).

2. Commonwealth customers located in NSW and connected to a NSW distributor's network.

Currently, Commonwealth departments and authorities are not subject to State taxes and levies. The network price increase is an increase in the charge for a service (being use of the distributor's or transmission operator's network) provided to the Commonwealth customer by the distributor or transmission operator. It is not a tax or a levy on the Commonwealth customer by the NSW Government. Therefore, the network price increase is applicable to a non-franchise Commonwealth customer.

3. Customers within NSW connected to a NSW distributor's or transmission operator's network where the source of energy is outside NSW.

In principle, the network price increase applies to non-franchise customers for the use of the distributor's network irrespective of where the energy being conveyed over that network is sourced. However, the Governor, on the recommendation of the Treasurer, does have the power to exempt classes of customers from the impact of the network price increase.

Private Networks and Embedded Generation

To the extent that a customer is connected to a distribution network not owned by a licensed distributor but receives electricity supply by utilising a licensed distributor's transmission and distribution system, that customer, if non-franchise, will pay the network price increase.

A non-franchise customer with embedded generation capability will pay the price increase on *gross* consumption of electricity received from the distributor. The price increase will not apply to energy sold by the customer to the distributor. Therefore, the price increase will *not* be based on the *net* consumption received from the distributor (which would reflect electricity supplied by

the customer to the distributor), nor on the customer's total consumption (which would include own-generated electricity).

Further Information

Further information on the application of the 0.52 cents per kilowatt hour price increase in network service charges can be obtained by contacting:

Energy Branch
NSW Treasury
Governor Macquarie Tower
1 Farrer Place
Sydney 2000
Telephone: (02) 9228 3208
Facsimile: (02) 9228 3173

Licensed electricity distributors and TransGrid should contact their Agency Relationship Manager within Commercial Sector Division of NSW Treasury for further information on the Electricity Distributor Levy or the Transmission Operator's Levy or on the application of the 0.52 cents per kilowatt hour price increase in network service charges.