

Jackgreen – the failure of an energy retailer

The perspective of the Energy & Water Ombudsman NSW
in dealing with Jackgreen customer complaints

Clare Petre, Energy & Water Ombudsman NSW

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Summary

The Energy & Water Ombudsman NSW (EWON) is in a good position to document issues arising from the failure of Jackgreen as an energy retailer in the national electricity market in Australia. Although Jackgreen operated in NSW, Victoria, and Queensland, most of its customers were in NSW (around 47,000). EWON had extensive experience with Jackgreen through complaints from its customers both before and after the company was suspended from the market by the Australian Energy Market Operator on 18 December 2009.

EWON has documented our perspective on Jackgreen as we believe it highlights important issues for the energy retail industry, energy regulation, and the Retailer of Last Resort (ROLR) provisions.

Factors contributing to Jackgreen's failure

Contributing factors for Jackgreen's failure included:

- inappropriate marketing to low income and disadvantaged customers
- initial problems with their 'smooth pay' billing system
- ongoing billing issues resulting in significant billing delays for some customers
- an ineffective credit management policy which allowed high arrears to accumulate
- no viable customer hardship policy to identify and assist those customers in difficulty.

Early warning signs

Early warning signs of Jackgreen's problems included:

- a significant increase in the number of customer complaints to EWON
- community agencies advising of problems in dealing with Jackgreen staff when trying to assist customers in financial hardship and facing disconnection.

EWON's identification of problems in 2006

Early engagement with Jackgreen to address the increase in complaints:

- 📅 **March 2006:** EWON senior staff met with the Managing Director of Jackgreen to discuss concerns about their marketing and billing issues. EWON kept IPART informed of concerns about the increase in complaint numbers, and at IPART's request, provided weekly reports on Jackgreen complaints and issues
- 📅 **April 2006:** IPART issued Jackgreen with a Notice of Preliminary Investigation as the first step in a formal compliance process
- 📅 **July 2006:** IPART conducted an investigation and audit of Jackgreen, which resulted in Jackgreen entering into a number of enforceable undertakings

Managing complaints following a ROLR event

The ROLR event presented a number of challenges for EWON in resolving customer complaints:

↳ Resolution of complaints following the ROLR event

On 18 December 2009 the Australian Energy Market Operator suspended Jackgreen from the national energy market, and existing Jackgreen customers transferred to the appropriate ROLR – either Country Energy, EnergyAustralia or Integral Energy. At this stage EWON was in the process of investigating a number of current customer complaints against Jackgreen.

To enable EWON to assist in the resolution of customers complaints, protocols were put in place with the Jackgreen Administrators and Receivers. Jackgreen officers nominated by the Receiver were initially able to provide account and billing information, and settled some matters on a commercial basis.

EWON has continued to receive customer complaints on a range of issues that have come to light following the ROLR event, for example incorrect transfers and disputed billing issues relating to the final accounts, and particularly in relation to the debt collection procedures and credit default listing carried out by the Receivers.

↳ Complex communication process

In the process of investigating customer complaints EWON has continued to communicate with both the Receivers, the various debt collection agencies they have engaged, and the credit default listing agency.

↳ Obligations were unclear

Jackgreen's license had not been revoked, so the status of the Receiver with respect to the license (and its accompanying obligations) was not clear.

↳ Who carries the cost of complaint handling?

The cost of EWON's assistance to Jackgreen customers was significant, but the Receivers did not agree to meet these costs, leaving EWON as an unsecured creditor.

↳ Customers continue to complain about being credit default listed

At the end of August 2010, EWON was still working to finalise a number of Jackgreen matters, and can expect to continue to receive complaints on an ongoing basis, for example as customers become aware that they have been credit default listed and wish to dispute this.

Lessons to be learned

EWON is not party to all information about Jackgreen, but we trust this report based on information available to us will assist the energy industry, government, and energy regulators to consider how a failure of a retailer in similar circumstances and the negative impact for customers might be avoided.

A handwritten signature in black ink that reads "Clare Petre".

Clare Petre
Energy & Water Ombudsman NSW

1. Background

Jackgreen was granted a NSW retail licence in 2004. The company became a member of EWON on 1 June 2004 as required by their licence.

Jackgreen's marketing was based on customers making a contribution to the environment by signing a contract for 'green energy'. Accredited green energy generally involves a higher tariff. Although Jackgreen began marketing green energy in 2005 it appears this was not accredited until the end of 2006.¹

The National GreenPower Accreditation Program Annual Audit reported Jackgreen residential customers on GreenPower contracts as follows (NSW, Victoria, Qld, SA)²:

- 2006 – 1,093
- 2007 – 47,742
- 2008 – 63,160 (of this total, 57,809 customers were on 10% GreenPower)

Customer demographics

Pensioners

Jackgreen marketed green energy, a product often considered more suitable to higher income customers because of the additional cost. However, their marketers appeared to target customers of lower socioeconomic backgrounds. For example, of the customers who contacted EWON about Jackgreen:

- in 2006 at least 29% were on a pension or benefit³
- in 2007 at least 51% were on a pension or benefit
- in 2008 at least 45% were on a pension or benefit
- in 2009 at least 41% were on a pension or benefit
- in 2010 at least 37% were on a pension or benefit

The NSW Department of Industry & Investment - Energy Branch is responsible for the energy rebate⁴ paid to eligible customers, so they are aware of the number of customers for each energy retailer who are in receipt of a pension or benefit. Following Jackgreen's suspension from the energy market and the triggering of the ROLR event, the Department indicated that they were surprised at the high proportion of Jackgreen customers who were pensioners.

1 The National GreenPower Accreditation Program 2006 Audit Report noted that: "Jackgreen – launched Jackgreen Power in the third quarter of the 2006 settlement period and is 10% GreenPower accredited. Jackgreen has a number of residential electricity products in the Australian energy market. Jackgreen Power is the lead product and is available to customers via the signing of a Market Contract in NSW, VIC and SA. Jackgreen Power is available to all residential customers in NSW, VIC and SA."

2 Most Jackgreen customers were in New South Wales

3 Customers who contact EWON are not asked routinely if they are in receipt of a pension or benefits so this figure is probably conservative. Most customers were recorded as 'unknown' in relation to a pension/benefit, eg 64% of the customers who contacted EWON in 2006.

4 Formerly called the pension rebate.

Public housing tenants

EWON was contacted by community workers and other advocates who were concerned that Jackgreen marketers appeared to be targeting public housing estates or blocks of units. This concern was supported by EWON's complaint statistics which showed a higher than usual percentage of customers who advised they lived in public housing. Of the customers who contacted EWON about Jackgreen:

- in 2006 at least 5% lived in public housing⁵
- in 2007 at least 10% lived in public housing
- in 2008 at least 11% lived in public housing
- in 2009 at least 11% lived in public housing
- in 2010 at least 3% lived in public housing

Almost by definition these customers had a low income, and many were disadvantaged in other ways.

⁵ Customers who contact EWON are not asked routinely if they live in public housing so this figure is probably conservative. Most customers were recorded as 'unknown' in relation to public housing, eg 83% of the customers who contacted EWON in 2006.

2. Factors contributing to Jackgreen's failure

In EWON's early discussions with company representatives, the people behind Jackgreen were idealistic and intent on offering NSW consumers the opportunity to make a contribution to the environment through purchasing green energy. However, it appears that Jackgreen had sown the seeds of its own demise from a very early stage through significant errors of judgement and an approach that contributed to a high bad debt ratio and their subsequent failure. In particular:

Inappropriate marketing

Jackgreen's telemarketing campaign which commenced in late 2005 and continued into early 2006 resulted in a high number of customers complaining to EWON about misleading marketing conduct by Jackgreen representatives.

Following discussions with EWON, Jackgreen's senior management agreed to send an apology letter to each customer concerned, confirming that the customer had been released from the contract without penalty, and that the customer's account would be transferred back to their previous retailer if they wished.

Jackgreen also provided written confirmation to EWON of the date that the apology letter was sent to each of the impacted customers, and advised that they were reporting each complaint as a Type 2 breach to IPART.

Targeting a premium product at vulnerable consumers

Their marketing approach was completely ill considered and inappropriate, in that they signed up large numbers of low income and disadvantaged customers who they then could not effectively assist or case manage, due to a lack of resourcing of their business operations. We are aware of Jackgreen marketers targeting public housing estates, Aboriginal communities, and other disadvantaged customers in rural and regional areas.

Inability to identify customers in hardship

We understand that Jackgreen did not undertake credit checks on customers (most if not all) for the first three/four years of their operation, with the result that some of the low income customers they signed up were already in debt to their existing retailers.

Advocates questioned informed consent

Community agencies and advocates began to contact EWON and Jackgreen to dispute the validity or legality of Jackgreen contracts on the basis of demonstrable vulnerability of their clients and inability to provide informed consent to the contract.

Inadequate billing system and business practices

Jackgreen signed up large numbers of customers very quickly without the back-end systems to support this.

Their customer base grew so quickly in the first few years it seemed the aim might be to sell the company. Jackgreen representatives assured EWON they had a genuine commitment to the market and were in for 'the long haul'.

Jackgreen acknowledged to EWON that they did not have adequate systems or staff to cope with the large increase in accounts, transactions, customer calls etc.

Initial problems with the 'smooth pay' billing system

The initial Jackgreen 'smooth pay' arrangement was a failure. This was initially a major selling point for Jackgreen marketers, ie customers only needed to pay a fixed amount per month to cover their consumption.

The fixed amount appeared to be a rough calculation that proved to be very wrong for many customers. Some customers found that they owed hundreds of dollars when the six monthly (or longer) account reconciliation was undertaken.

In some cases the reconciliation was delayed or inaccurate, creating further issues for customers with their billing. For many customers receiving Centrelink benefits, delays in billing contributed significantly to their arrears increasing to a level (eg \$3000 to \$7000) that was far too high for them to service without payment plans extending to several years.

Ongoing billing issues

Jackgreen abandoned the bill smoothing process and adopted quarterly billing in arrears. Despite this system change, we understand that there were still significant numbers of customers experiencing extended billing delays prior to 18 December 2009.

In our dealings with Jackgreen over several years, but particularly in the months following the ROLR event, EWON developed serious concerns about the accuracy of Jackgreen's billing system data. For example:

✎ Not applying the pensioner rebate

Despite some customers paying their bills through Centrepay or advising of their pensioner status on the contract, this was not recognised and the pension/energy rebate had not been applied to their account. For example:

The customer was with Jackgreen for 2-3 years. When she signed with Jackgreen she provided her pension number and details and she has a signed copy of the contract that confirms this. She said that from the beginning Jackgreen did not apply the rebate and despite her contacting them on several occasions the problem was never resolved. When she moved to the ROLR the pension rebate was applied from the first bill.

EWON's review of Jackgreen's records confirmed that the customer is a single parent pensioner who disclosed his financial hardship to Jackgreen in July 2009 following disconnection for non-payment. He was paying \$30 per fortnight via Centrepay for an extended period from 7 March 2006 and increased this to \$60 per fortnight in July 2009. Jackgreen's account notes refer to 'life support' but Jackgreen was unable to explain this reference as no further details were available in their records. Jackgreen confirmed that the customer should have received the pension rebate from the date his account was set up, and made an adjustment to the account to reflect the retrospective application of 3 years of the energy rebate.

Inadequate recording keeping

When a new billing system was put in place in September 2009, all accounts with a nil balance or for which there had been no activity on the account for 12 to 18 months, were not migrated to the new system. While data and other information relating to these nil balance accounts and inactive accounts was archived, EWON was advised that this information was discarded a few months following the ROLR event and is no longer available for review.

The customer whose account was transferred in error to another retailer well before the ROLR event contacted EWON for assistance when he received a large backbill from that retailer and had not been able to obtain information from Jackgreen about his account with them. When he contacted Jackgreen for account information in March 2010 they advised that there was no record of him having a Jackgreen account. Jackgreen eventually sought information from MSATS⁶ as to whether they had ever been the FRMP⁷ for the site despite the customer's advice that he had retained copies of some of his Jackgreen bills. Jackgreen then advised EWON that they had found a record in MSATS and advised that the customer only had an account from 8 May 2007 to 3 August 2007. The customer disputed the accuracy of this information and faxed Jackgreen a copy of his contract, which was signed in 2006 and one of his bills from an earlier period than that specified by Jackgreen.

Erroneous credit default listing of customers

Jackgreen advised that in mid 2009 they had to dismiss the services of a mercantile agent, Impact, on the basis that their records relating to Jackgreen customers were significantly unreliable. We understand that some customers had been erroneously credit default listed when their payments had not been accurately recorded or when they still had active accounts.

⁶ MSATS: Market Settlement and Transfer Solution (Australia)

⁷ FRMP: Financially Responsible Market Participant

In the early years of their operation, Jackgreen advised EWON that did not have the back office systems in place to deal with the significant increase in customers, particularly during 2006–2007. They did not have enough staff to deal with the volume of customer calls and other contacts. They also did not have a customer assistance/hardship program to assist customers in financial difficulty who were falling behind in payments.

For the first time in a number of years, EWON was contacted by customers with significant arrears from \$1,000 to \$3,000 or more. Factors leading to this situation appeared to include:

- inadequate systems and staffing to enable follow up with customers as arrears increased
- problems with the monthly 'smooth pay' arrangement whereby customers were paying much less than their consumption, then receiving a large (and frequently delayed) reconciliation bill and being unable to pay this
- some customers did not receive bills for long periods as the result of transfer delays or other transfer issues.

During 2009 Jackgreen staff indicated to EWON that the company was carrying a high bad debt ratio. They said they had issued service orders for disconnection of large numbers of customers but that there were delays in the distributors carrying out these service orders, with the result that arrears continued to increase for some customers.

On 25 September 2009 the CEO of Jackgreen wrote to EWON to say that:

Data provided by stakeholders indicates that billing is an area that Jackgreen need to improve. In light of this feedback the existing Jackgreen billing system has been reviewed and the decision made to move to a new billing system since it will reduce billing exceptions, system costs and provide greater visibility of transfer issues such as delays, missed transfers and incorrect transfers. The new billing system will also improve our customer service capability. Extensive user acceptance testing has been conducted with the intended 'go live' date on Monday, 28 September 2009.

Ineffective credit management policy

As arrears grew, so did Jackgreen service orders to NSW distributors for disconnection of customers.

Concern was raised about the high rate of disconnection, including from EWON and IPART. Jackgreen's response was simply to impose an arbitrary limit on the number of disconnections each month. While this had the immediate effect of reducing the disconnection rate at an artificial level, it did little to impact on customer arrears. It also sent a message to many customers that notices from Jackgreen about disconnection for non payment meant little, had few or no consequences, and could effectively be ignored.

Jackgreen's struggle with effective credit management strategies is reflected in their implementation of a much more stringent credit policy in 2008–2009. This policy required disconnected customers with arrears of less than \$500 to pay the amount outstanding in full before Jackgreen would agree to reconnect supply. Those customers who owed more than \$500 were required to pay half the arrears upfront and clear their arrears within a very tight timeframe.

During 2008–2009 EWON was contacted by increasing numbers of Jackgreen customers who had been disconnected. Many of these customers were in receipt of a Centrelink pension or benefit, had exceptionally high level arrears that they could not service (typically in the range of \$2500–\$5000), and were unable to meet Jackgreen's credit policy requirements and negotiate a realistic and manageable payment arrangement directly with Jackgreen. Jackgreen's approach to these matters was to invariably advise EWON that they no longer wanted the account holder as a customer and to refer the customer to their standard retailer for assistance with reconnection.

EWON gained a further insight into the operation of Jackgreen's credit policy when investigating complaints from customers seeking a manageable payment arrangement following the ROLR event. For example:

The customer in receipt of a pension advised EWON that he had been disconnected for 6 months from January 2009 for affordability reasons. The customer said he needed a longer term payment arrangement to clear the balance of his Jackgreen account following the ROLR event. In reviewing the circumstances of the disconnection with Jackgreen, they omitted advising EWON that they had failed to bill the customer for over 9 months in 2008. When the customer received a large back bill he was unable to pay this and was disconnected in January 2009. The customer maintained the 6-months payment arrangement Jackgreen had agreed to but the customer and his family were without supply for 6 months while he reduced his arrears to a level where Jackgreen would consider reconnection. Jackgreen did not refer the customer to their own hardship program or to EWON for assistance. The customer did not appear to know about the availability of EAPA. The customer and his wife, who also receives the pension, have a dependent teenage daughter at home. The customer advised EWON that he managed without electricity supply by knocking together a home built generator that he said kept the lights on and ran his fridge and television, but the family had no access to hot water for 6 months. He also advised that the noisy generator caused problems for his neighbours.

No viable customer hardship policy

Jackgreen did not have a viable customer assistance/hardship program in place to assist customers who struggled to pay their bills. Jackgreen failed to proactively identify customers in financial hardship despite the fact that these customers appear to have been disproportionately represented in their customer base due to Jackgreen's flawed marketing strategy.

3. Early warning signs of Jackgreen's problems

Significant increase in complaints to EWON

In the first calendar year of Jackgreen's membership of EWON we received 3 complaints from customers, and in 2005 there were 33 complaints. In 2006 complaints to EWON about Jackgreen suddenly jumped to 800 and continued at relatively high levels for subsequent years:

- 2006: 800 complaints
- 2007: 414 complaints
- 2008: 388 complaints
- 2009: 455 complaints
- 2010: 697 complaints

Problems encountered by community agencies

Jackgreen's intransigent credit management policy also seemed to have alienated some community agencies with cases referred to EWON indicating that the agencies' ability to work cooperatively and productively with Jackgreen staff was seriously eroded.

One centre manager for a large community agency contacted EWON about Jackgreen's refusal to reconnect supply for a customer assessed as being in financial hardship, after the customer's \$300 initial payment. Jackgreen advised that they wanted 50% (\$430) of the total amount owing of \$860, in order to reconnect.

The manager observed that Jackgreen's credit policy placed her agency under significant duress as Jackgreen knew that she would not allow a situation where the customer was left to cope on her own with four young children without power over the weekend. The lack of reconnection would have resulted in a 6-day disconnection period for this customer.

The manager also informed EWON of another client she had recently assisted who was refused reconnection by Jackgreen unless she paid the full amount of \$600 that was outstanding on her account. The agency provided that customer with \$600 in EAPA and said they had reported their concerns about Jackgreen to the [then] Department of Energy.

4. Early engagement with Jackgreen

We raised our concern about the significant increase in complaints with Jackgreen and with the NSW energy regulator, IPART.

On 2 March 2006, EWON provided the first of a number of regular reports to IPART about Jackgreen customer complaints. The first report contained case examples including the following:

The customer was approached by a door to door marketer who was extremely persistent and would not leave. The customer eventually signed a contract so the marketer would go away. He decided that he did not want to continue with the contract and called to cancel the contract. He has now received a letter from Jackgreen stating that he will be their customer from the date of his next meter read, around 3 February 2006. The customer would like the contract terminated without an early termination fee.

A Jackgreen marketer approached the customer in September 2005. He signed with Jackgreen after being told that nothing would change, the billing would be the same and it would cost him nothing. He now finds he is paying monthly in advance. He is also charged a \$10 late payment fee. He was not told any of the details of the contract - only told that he would be helping the environment. The marketer kept saying that everything would be the same. The customer feels that the marketer misled him by saying that everything would be the same, and not explaining how he will be billed.

In early December 2005 a Jackgreen marketer visited the customer and advised that he was conducting a survey and would the customer be interested in buying green energy as it is cheaper and better for the environment. The customer said that he was interested as he is a pensioner and cheaper is always better. The marketer asked him to sign an acknowledgement form to confirm that he had visited the premises. The customer signed it. On 15 January 2006 the customer received a letter from Jackgreen advising that his electricity had been transferred on 20 December 2005 and requesting his credit card details otherwise a \$2 per month administration fee would apply. The customer called Jackgreen and was told that if he does not pay the fee the contract will be cancelled and a termination fee will apply.

The advocate works for the Department of Housing and was told by one of their elderly tenants that Jackgreen marketers told him that they were from the Department of Housing. The tenant let the marketers inside his property and they asked them to sign a document. He asked them for their ID but when they showed it to him it was not for the Department of Housing. The tenant then asked them to leave and reported it to the advocate.

On 2 March 2006, EWON senior staff met with the Managing Director of Jackgreen to discuss the steps the company was taking to address marketing issues and payment options. At the request of IPART we provided weekly reports about Jackgreen customer complaints/issues.

On 13 April 2006, IPART advised EWON that they had given Jackgreen until 4 May 2006 to respond to a notice of Preliminary Investigation as the first step in a formal compliance process. Jackgreen informed IPART that they had ceased telemarketing and were contacting all customers to see if they were satisfied with their transfer to Jackgreen. If not, the customers would be transferred back to their original retailer without penalty.

On 27 April 2006, senior EWON staff met with IPART and confirmed that we would continue to send weekly reports about Jackgreen complaints, then move to monthly reports, but this could be varied at any time if IPART required additional information.

EWON's report to IPART about Jackgreen cases received in June 2007 included the following:

The advocate contacted EWON on behalf of his neighbour. In mid-2005, the customer was approached by a door to door marketer shortly after he was discharged from hospital following a stroke. He is paralysed down one side and has only a limited grasp of English. He recently received a letter from a debt collection agency regarding a debt of \$263.94 for period Oct 05 - Feb 06. The advocate has spoken with Jackgreen but feels that it is not fair that they should be allowed to bill his neighbour when he considers that his neighbour entered into a contract without informed consent.

IPART conducted an investigation and audit, and in July 2006 published the following statement on their website in relation to an enforceable undertaking by Jackgreen:

In late February/ early March 2006 the Independent Pricing and Regulatory Tribunal (Tribunal) became aware of complaints being referred to the Energy and Water Ombudsman (EWON) regarding the marketing practices of Jackgreen (International) Proprietary Limited (Jackgreen) in the retail supply of electricity in NSW.

As a result of the Tribunal's investigation, the Tribunal has concluded that Jackgreen (through its telemarketing campaign conducted between December 2005 and early March 2006) transferred customers without their consent and did not fully disclose the terms of its contractual offers and as such did not comply with its retail suppliers licence.

Jackgreen has co-operated fully with the Tribunal's investigation and acknowledges that its compliance systems and processes did not allow it to deal with its telemarketing campaign during this period. Jackgreen acknowledges that the telemarketing agent engaged for the campaign caused confusion, inconvenience and distress to some customers, and unreservedly apologises for this. Jackgreen has informed the Tribunal that as soon as practicable after Jackgreen became aware that the telemarketing campaign had given rise to complaints, Jackgreen initiated its own enquiry and terminated the contract of the telemarketer.

Jackgreen has entered into enforceable undertakings with the Tribunal to prevent a repetition of the conduct. The undertakings require that Jackgreen:

- undertake an enhancement of its compliance systems and procedures*
- undertake further independent assessment by auditors of its compliance systems and procedures*
- undertake training and supervision of its marketing staff/ contractors*
- enable Jackgreen customers adversely affected by the conduct of the telemarketing agent to transfer back to their original electricity supplier without cost to them.*
- apologise in writing to all affected customers*

At the Tribunal's request, Jackgreen has established a dedicated telephone line for any complaints arising from the marketing conduct of Jackgreen or its agents, which shall be operational for a period of 3 months. The number is 1800 728 121.

On 4 September 2007, IPART advised EWON that they no longer required the monthly Jackgreen reports as complaint levels and issues had stabilised. EWON confirmed that complaint numbers had continued to reduce through August 2007 and that we would revert to providing quarterly reports to IPART. IPART asked EWON to advise if there was a sudden increase in complaints or if a particular issue emerged in between quarterly reports.

5. Customer issues following the ROLR event

On 8 December 2009, Jackgreen issued a statement regarding a media release by the Australian Stock Exchange:

Integral v Jackgreen hearing adjourned

Integral Energy Australia Limited (Integral) and a Jackgreen Limited (ASX:JGL) subsidiary Jackgreen (International) Pty Ltd, appeared before J Austin in the NSW Supreme Court this morning in relation to an application by Integral seeking an order to wind up Jackgreen (International) Pty Ltd. The case was adjourned to December 18th.

On 18 December 2009 the Australian Energy Market Operator suspended Jackgreen from the national energy market. This triggered a Retailer of Last Resort event in NSW, Victoria and Queensland. The biggest impact was in NSW, which had the greatest number of Jackgreen customers.

The transfer of Jackgreen customers to the NSW Retailers of Last Resort – EnergyAustralia, Integral Energy, Country Energy – appeared to go very smoothly. Information was provided for Jackgreen customers by the ROLRs, as well as Industry & Investment NSW, EWON and by Jackgreen.

EWON soon began to receive complaints from former Jackgreen customers which can be categorised as follows:

Information requests and estimated reads

EWON was contacted by some customers requesting clarification as to the ROLR event. These enquiries were dealt with by the provision of information and by referral to relevant sources, primarily the information on the website of the Energy Division of Industry & Investment NSW. Many of these enquiries were generated by extensive delays encountered by customers in attempting to ring the relevant Jackgreen contact numbers.

A number of customers also contacted EWON concerned about the estimated reads on their final bill. EWON explained the process and the reasons for the estimated reads.

Customers in credit

Given the original billing model of Jackgreen which was based on regular payments in advance, a number of customers had a credit balance on 18 December 2009. Customers contacted EWON seeking information on how to claim their advance payments/credit from the Administrator/Receiver Managers.

The customer contacted EWON and advised that she had a \$500 credit with Jackgreen. EWON provided referral to the relevant information on the Australian Securities and Investments Commission (ASIC) website and the Energy Division of the Industry and Investment NSW web site.

Customers making payments after the ROLR event

A number of customers were concerned because they made payments after 18 December 2009. Where possible, EWON referred these customers directly to Jackgreen.

The customer was unaware of the ROLR event and paid \$500 to her account after Christmas 2009 to make things easier in the coming year. She then received a final bill that did not reflect her \$500 payment. She was referred to Jackgreen.

Missing payments

A number of customers advised EWON they had made payments which were not noted on invoices nor in demands for payment. Where possible, EWON referred these customers directly to Jackgreen. The Receiver Managers acknowledged this problem in relation to the final bill issued to customers, advising EWON that:

Due to the process we needed to use to get these bills out as soon as possible there are a large number of customers who will receive their final bill that shows the prior bill as being unpaid. Our records will show that the payment has been made and therefore it would be appreciated if you could advise customers to pay the amount of the final bill only, which is detailed on the bill.

Jackgreen subsequently confirmed receipt of customers' payments where EWON referred matters to them on this issue. EWON advised Jackgreen that it would be appropriate to write to the affected customers confirming receipt of their payments given Jackgreen's advice that the Receivers were unlikely to agree to issuing them an amended bill.

EWON wrote to affected customers to confirm Jackgreen's advice that their previous payments have been receipted.

The customer said her Jackgreen bill for period ending 19/10/09 was \$295.84. She paid \$300 towards the bill. The customer has received her final Jackgreen bill and only \$200 has been credited to her account. She said she has the receipts for the 3 x \$100 payments she made. Her last payment was made on 8/12/09, but is not reflected on the Jackgreen bill. The customer was advised to contact Jackgreen to locate her payment.

The customer made three payments to Jackgreen - one on 16 December 09 for \$161.12, a second on 2 January 2010 for \$99 and a last payment on 13 January 2010 for \$101. These payments were not on her final bill. She tried to contact Jackgreen on a number of occasions but after being on hold for over an hour on her last attempt she contacted EWON. EWON passed her details on to Jackgreen for follow up. (Case#85550)

The customer received a final bill from Jackgreen for the period 3/12/09 – 18/12/09 which included charges of \$44 and carried-over arrears of \$195.30. The customer said she paid \$195.30 via the internet on 24/12/09 and obtained a receipt number. She is not disputing the \$44 final bill. Jackgreen's response to EWON on 23 February 2010: Customer paid 24/12 \$195.30, 14/01 \$44.08. A/c now in credit \$6.27.

Energy rebate issues

A number of customers reported that the energy rebate was not being applied to their bills. These customers were referred to Jackgreen and to the Industry & Investment NSW website.

The customer advised that Jackgreen has not applied the pension rebate to her account despite her providing her pension details on the contract she signed on 13/08/08. Jackgreen response to EWON on 23 February 2010: "Pension number on contract [number supplied] was invalid hence no rebate applied. Jackgreen to contact customer to check number."

An advocate advised that the customer had received a first and final bill from Jackgreen for the period 23/9/09 to 18/12/09 for \$168.89. The advocate said that the customer's bills are normally around \$80. He rang Jackgreen and they said the money was owed by the customer and then hung up on him. The advocate advised that Jackgreen has applied the customer's pension rebate. He said he cannot believe marketers can sign up an 80 year old woman.

Double direct debiting

A number of customers contacted EWON because their bank accounts had been direct debited twice for the same amount. These customers were referred to Jackgreen and to the Industry & Investment NSW website.

The customer received a final bill for \$502 when he closed his electricity account with Jackgreen as he was moving overseas. Jackgreen withdrew the \$502 via direct debit on 16 Dec 2009. However, they then withdrew this amount again on 18 Dec 2009. He has tried to call Jackgreen, but no one answers. The customer would like the \$502 to be returned to him.

The customer has been direct debited twice for a bill of \$145.52 but has not been able to get onto Jackgreen to discuss a refund of the amount taken in error.

Fees and charges

Customers have contacted EWON concerning fees and charges appearing on their final accounts. EWON has generally referred these customers directly to Jackgreen.

The customer moved into premises in June 2009. On 17.11.09 she received two bills dated 9.11.09 for different billing periods and both due by 26.11.09. She rang Jackgreen and was given an extension to pay until 30 Dec 2009. The customer said her accounts were paid in full. On 8.1.10 she received a final bill and was charged two late payment fees. The customer paid the account in full. On 15.1.10 she received another bill for the period 16.12.09 to 18.12.09 for \$316.38. She considers this bill is excessive for 2 days. She rang Jackgreen and they advised that there were arrears owing from previous accounts as the last account contained an error. Jackgreen stated that failure to pay would result in her account being referred to a debt collector. She rang Jackgreen later that day and was advised she owed \$206.58. On 19.1.10 she received a call concerning an overdue account with Jackgreen. The customer does not believe she owes Jackgreen anything and considers she has received poor and unprofessional service.

The customer transferred her account to Jackgreen several years ago. Since this time she has had problems receiving her quarterly electricity bills. The invoices are never sent and she always has to ring and request them. She received a final bill from Jackgreen for \$550.00 for the period 1/12/09 - 18/12/09. This bill includes non direct debit charges of \$10.00 and a late payment fee of \$7.00, for her last bill which was never issued. The customer disputes the application of these fees.

The customer had a direct debit arrangement with Jackgreen for the payment of his electricity bills. He said that on his final bill there is a late payment fee of \$7. Customer said that he has contacted Jackgreen twice about the levying of a late fee and has been told that the amount will be re-credited to him. This has not occurred.

\$50 credit offering

A number of customers signed up with Jackgreen on the basis of a \$50 credit to be applied to their account. This credit was not being applied to a number of accounts. These customers were referred to Jackgreen.

The customer said that when she signed up with Jackgreen she was promised a \$50 voucher. This has not been honoured and she would like to receive it. She rang Jackgreen to follow this up and they referred her to the ROLR but the ROLR was not unable to assist.

The customer said that when he signed up with Jackgreen he was told he would receive a \$50 voucher which would be taken off his first bill. His final bill from Jackgreen is also his first, and the \$50 discount has not been applied. Jackgreen informed EWON that this customer had paid his final account less \$50 and that they considered the matter settled. Jackgreen provided written advice to EWON that: "New bill can't be issued. Customer has paid leaving a balance of \$50, which will be waived."

Payment arrangements

Customers contacted EWON because they were refused payment arrangements, and in some cases encountered poor customer service when requesting payment arrangements. Where possible, EWON referred these customers back to Jackgreen for follow up.

The customer said that he had a direct debit arrangement with Jackgreen for \$75 per fortnight. He contacted Jackgreen after receiving a final bill and managed to speak to someone who he said was very rude and abrupt. The customer wants to continue paying \$75 per fortnight (as this is what he can afford). The Jackgreen representative told the customer that he should try to pay more than \$75 and referred him for EAPA vouchers.

The advocate rang on behalf of her son who is currently on Centrelink unemployment benefits. He rang Jackgreen to make a \$50 per f/n payment arrangement but they said it was not enough. He advised Jackgreen that he could not afford anymore, and was told he would be credit listed if he does not pay by a certain time. The customer swore at Jackgreen and was advised "that's it, I'm defaulting you right now" before the call was terminated. The customer then rang to speak to a supervisor who said, "you swore at a lady, what do you expect?" The advocate is very worried her son will be credit listed.

The customer was previously with Jackgreen and transferred to the ROLR. She said she was contacted by Jackgreen about the money she owes them. She is not aware how much she owes, but she offered a \$25 per f/n payment plan which was rejected. The customer said the person who rang her asked about the contents of her freezer and whether she had a fish tank, as they would disconnect her electricity. The customer said she would come to EWON and said the Jackgreen representative told her that EWON are "money hungry people from the government and give them my regards". The customer said she could not afford more than she has offered as she also has a payment plan with the ROLR. She said this made him "angry" and he said "it's people like you who go from company to company that cause this". The customer was very worried she would be disconnected by Jackgreen.

Associated products

A number of customers had purchased other products, for example hot water systems, through a Jackgreen subsidiary company and contacted EWON with concerns. These matters were outside EWON's jurisdiction however relevant referrals were provided to the Fair Trading NSW.

The customer had a solar Hot Water System installed in June 2009 through Jackgreen's subsidiary 'Easy being Green'. He said that the solar HWS has a faulty roof sensor. He said that he has not had any luck with following this up with the installer. Now that Jackgreen has gone into administration he does not know who to approach.

The customer applied to Jackgreen to have solar power installed at her property. On 16 Dec 09 she contacted Easy Being Green and was told she needed to pay the money upfront. She paid \$4154 to Jackgreen. The customer then spoke to the plumber who was to do the work and he advised he would no longer be coming out to do the installation as Jackgreen had gone into receivership. The customer has been in touch with various agencies and no one can assist her. She is a sole parent with 3 children and cannot afford to lose this money.

The customer signed a contract with Jackgreen on 3.12.09. She said the marketer insisted she provide her Centrelink number to him immediately or she would not receive the deal they were offering which was \$50 off her first bill. She also paid Jackgreen \$200 as a deposit towards a hot water system. She wants to find out about the offer of \$50 off the first Jackgreen bill, which has not been applied to her account. She also wants to discuss the \$200 deposit she paid towards a hot water system.

Billing related complaints

Customers were receiving final bills which they disputed because of process issues occurring prior to the ROLR event. These matters include failure to bill, high bill disputes, debt transfer, transfer in error matters, failure to close an account upon request and some other issues. EWON would have normally investigated these matters and arrived at a resolution. This process of investigation was significantly hindered by the ROLR event.

The customer moved into her premises on 24.7.09. She then received a bill from Jackgreen for \$621.60 for the period 30.6.09 to 30.9.09. She rang to dispute the bill, Jackgreen told her they had an estimated reading and that they would examine the bill. Jackgreen sent her an amended bill for \$621.60 plus \$245.41. The customer does not understand the billing and how they can bill for before she moved into her premises.

The customer has paid her account with Jackgreen twice. She paid by credit card and then Jackgreen deducted the same amount by direct debit. She rang Jackgreen and they said they would reverse it but have not done so.

The customer said her account was with her preferred retailer, however she then received two bills from Jackgreen in late 2007 and early 2008 addressed to "The Occupant" and with a slightly different address. She said that when she contacted her preferred retailer they advised that they had contacted Jackgreen and that Jackgreen had the wrong NMI for the customer's premises. However, the customer said that she had now received a debt collection letter for \$967 from Jackgreen and does not consider she should have to pay this.

The customer was a Jackgreen customer and transferred to another retailer in early 2009. He said he was advised that his account was \$270 in credit at the time of closure. He then received a bill from Jackgreen in November 2009 for around \$700. He contacted Jackgreen and was advised that the bill was issued in error. He is now receiving calls from a collection agent for Jackgreen to recover \$700.

The customer moved out of her property on 19 October 2009 and rang Jackgreen to close the account. However she has continued to received bills from Jackgreen for billing period 16 Sept 2009 to 14 Dec 2009 for \$109 and 15 Dec 2009 to 18 Dec 2009 for \$131.88. The customer is anxious as she does not know how to resolve the situation.

The advocate said that she previously had an account with another retailer and was on their hardship program. She said that her partner entered a contract with Jackgreen. The advocate said her partner cancelled the contract by phone and email the following day and this was followed up by a letter. They then received a bill a few months later and contacted Jackgreen who said they would cancel the contract. This was not done and now they have received a notice from a debt collector about a debt of \$1242.66.

The customer has just received 3 bills from Jackgreen – they total \$1123.83 and are due on 11.2.10. She said she has never received a bill from Jackgreen since transferring to them and has called them to ask for the bills. The customer was put in touch with Jackgreen and a payment arrangement was arranged.

The advocate, who is a Legal Aid solicitor, advised that Jackgreen's mercantile agent had pursued the customer for payment of an incorrect amount. The customer sought assistance from Legal Aid when he received a notice from a mercantile agent advising that he owed Jackgreen \$2855.52, which he disputed. The advocate contacted the Receivers who subsequently advised that there had been 'an error' but provided no details regarding the basis for this. The correct amount was confirmed as \$510.27. The advocate advised EWON that the customer was in a vulnerable situation when Jackgreen marketed a contract to him.

EWON is aware from the Receivers that there were problems when one mercantile agency erred in the calculation of their commission, which they applied as a percentage of 200% to the customer's total arrears. The Receivers referred to Jackgreen's ledger 'as the ledger from Hell' in discussion with EWON.

Debt collection

In our dealings with Jackgreen staff retained by the Receivers to recover unpaid accounts, EWON was advised that towards mid-2010 a significant number of former Jackgreen customers in NSW (in the order of 40–50%) still owed money on their accounts. Even though this would have included final accounts that were issued in February 2010, this still represented significant outstanding debts to Jackgreen, and reflected a high bad debt ratio that appeared to have dogged the company from early in its operation.

The debts for many Jackgreen customers had been on-sold or referred to mercantile agents, and we were advised that commissions of around 20% plus GST were being charged to customers.

EWON raised this with the Receivers who advised that as far as they were aware, prior customers who had entered into extended payment arrangements and had honoured those arrangements had not been required to pay collection costs.

In a letter to the Receivers dated 26 May 2010, EWON raised the following queries and comments:

- Who is monitoring whether customers who have honoured their arrangements have not been charged collection costs?
- Some customers, despite the best of intentions, may not be able to continue to honour their arrangements because of changed/unanticipated personal and financial circumstances. Given the low income/disadvantaged status of many Jackgreen customers we suggest it would be unfair for commissions to be imposed on any customers whose arrangements could not be sustained in the short or longer term.
- If the commissions are being imposed in accordance with Jackgreen's terms and conditions, does this mean that the Receivers and/or mercantile agents are standing in the shoes of Jackgreen? If so, why do other regulatory and licence conditions also not apply eg continuing membership of EWON as the dispute resolution scheme?
- Why does clause 19 of *The Commercial Agents and Private Inquiry Agents Act (NSW)* not apply, ie
 - Licensee not to charge debtor for expenses of debt collecting*
 - (1) A licensee must not request, demand or collect from a person (the "debtor") any payment for the costs or expenses incurred by the licensee in connection with the collection from that person of money due under a debt.*
 - (2) Any money received from the debtor by a licensee in contravention of subsection (1) may be recovered by the debtor from the licensee, as a debt, in any court of competent jurisdiction.*
 - (3) This section does not limit any right that the person to whom the debt is payable (the "creditor") may have at law with respect to the recovery from the debtor of the creditor's costs in recovering the debt.*

Many of Jackgreen's former customers are people on low fixed incomes, in particular Centrelink pensions and benefits. Their Centrelink payments are protected, and they have few or no other assets. We query the merits of debt collection for many of these customers, since little if any money will be recovered, and these customers will be placed into further hardship and under further stress.

In a letter dated 31 May 2010 the Receivers responded:

In relation to collection costs, I confirm the company is entitled to charge a fee pursuant to clause 9.1 of the CAPI Act⁸. Our firm has engaged a number of agents to assist in the collection of outstanding accounts and the customer is being charged a fee in that regard in accordance with the terms and conditions of trade.

⁸ CAPI: *Commercial Agents and Private Inquiry Agents Act (NSW) 2004*

It is not the agents charging the fee to customers but rather the company in accordance with the terms upon which we engaged the agents on. The fee of 20% + GST, notwithstanding imposed by the agents, is imposed in accordance with the terms between the Receivers/Company and the agents appointed, and is directly related to the costs associated with recovering the outstanding amount. Given this, Clause 19 of the Commercial Agents and Private Inquiry Agents Act (NSW) does not apply.

Credit default listing

Complaints to EWON indicate that there may have been a surge of credit default listing in the final month/s prior to 18 December 2009, and possibly also in the immediate aftermath of Jackgreen entering receivership.

Credit default listing often has significant negative consequences that are disproportionate to the relatively small debt owed by a customer. Where the customer is disputing the debt, the fact that the company making the listing is in administration is particularly concerning. EWON's understanding is that the only way a listing can be lifted is if it is requested by the party making the original listing, or by a party who is authorised to act on behalf of the listing agency. Adding a note to the record that a debt has been paid can still lead to denial of access to credit for customers for a number of years.

Given the confusion around the ROLR event, the lack of access to records, the limitations on EWON as an external dispute resolution agency, and our serious reservations about the integrity of Jackgreen's customer information and account records, EWON had serious concerns about customers being inappropriately credit default listed with no opportunity for redress.

Many customers may not discover they have been credit default listed until they apply for credit, possibly in months or years to come. If they dispute the credit default listing in the future, it appears there will be no mechanism for dealing with this, and no entity to authorise withdrawal of the listing in any case.

Examples of customer complaints received by EWON include:

The customer discovered that he was default listed on 2 December 2009. He said he received a letter of final demand dated 10 December 2009 for \$332.86 from Jackgreen warning of possible disconnection and credit action, although the default had already been placed. He also said the bill of \$332.86 stated that an amount of \$30 is also owed. He does not know what this is for. The customer has paid the amount owing.

The customer went to buy a car and found that he was credit listed by Jackgreen. He said he has never had an account with Jackgreen.

The customer found out that she had been credit listed for non payment of an account with Jackgreen. She considers the credit listing to be incorrect. She said she started receiving invoices for her address but in another person's name. When she rang Jackgreen to dispute these invoices she provided her name and details. This led to an account being established in her name and the arrears in the other person's name were transferred to her account.

The customer signed with Jackgreen but then phoned to close the account as she was moving out. She was told that transfer had not occurred and the account would be cancelled. A few months later the customer received a bill from Jackgreen for \$500. She rang Jackgreen to dispute the bill. Jackgreen apologised and advised that she was billed in error and the transfer had not occurred. A few months later she received another bill for \$800 which included the \$500 arrears. The customer again phoned Jackgreen and spoke with a manager. The manager subsequently wrote to confirm that the billing was an error and that the customer had notified Jackgreen she was leaving the property and the bill would not have to be paid. On 15.1.10 she received a phone call from her bank advising that Jackgreen had credit listed her for the disputed amount. The customer said she had provided Jackgreen with her new address however received no reminder notices, disconnection notices or debt collection calls.

EWON questioned the integrity of the credit default listing process given the large proportion of Jackgreen customers who were on a low income or disadvantaged and the errors in accounts, the disputed billing, unresolved complaints, and unreliable or unobtainable information. In our letter to the Receivers of 26 May 2010, we requested their consideration of a blanket withdrawal of all credit default listings of Jackgreen customers.

In their letter of reply dated 31 May 2010 the Receivers stated:

I note you requested that we withdraw all credit default listings applied to customers by the company. I advise we are not in a position to agree to this request. These listings can be questioned by customers and dealt with appropriately and lifted in the event of legitimate valid reasons.

While investigating a customer's complaint about being credit default listed by Jackgreen on 2 December 2009 for unpaid arrears of \$299, EWON was advised by the Receivers that they were unable to provide a copy of any Jackgreen record – either an organisational record or one that was specific to the customer's account – that confirmed Jackgreen had provided written notification to the customer concerned of an impending credit default listing. Rather, the Receivers advised EWON that:

...all customers who were allocated to NRG [a mercantile agency] were sent a letter warning that they would be credit defaulted. [Jackgreen's former credit manager] says that this letter was a mail merge document and details were not recorded in the notes for each account. The letter was sent in about November 2009. The accounts were allocated to NRG on 15 December 2010. All accounts that were allocated to NRG received the letter. The account was credit defaulted on 2 December 2009.

EWON understands that Jackgreen had a regulatory obligation to provide written notification to the customer about the risk of credit default listing. We also understand that this infers that Jackgreen can demonstrate via a primary system record that they have complied with this obligation. The customer said she did not receive any letter or notice from Jackgreen, despite having maintained the same address for several years.

Although there are no records to confirm that Jackgreen provided appropriate notification, the Receivers did not accept that the customer was listed in error and declined to apply to Veda Advantage to have the listing removed. The Receivers advised EWON that they feel confident that they could have provided the records prior to 31 March 2010, but it was not feasible for them to try to search for Jackgreen organisational records after this. With the customer's agreement, EWON referred this matter to the Consumer Credit Legal Centre.

On 4 August 2010 EWON wrote to Veda Advantage about customers of Jackgreen International who had been referred for credit default listing, either by Jackgreen directly or subsequently by the Receivers for the company. We requested a review of credit default listing of all these customers, on the basis of serious concerns about the integrity of Jackgreen's billing information and their approach to customers over a number of years.

Our concern was reinforced by information from one of the mercantile agents handling Jackgreen debts, who advised in mid-August 2010 that they had regularly found anomalies with Jackgreen account numbers in their business dealings with Jackgreen International, for example, missing digits or extra digits on account numbers.

Customers in hardship

The situation was unclear for customers who had affordable payment arrangements with Jackgreen prior to 18 December 2009 or who required affordable payment plans as a result of the issuing of a final account.

EWON and customers were advised that arrears unpaid after 31 March 2010 would be transferred or on-sold to mercantile agents with additional charges of up to 25%. EWON was very concerned about the impact of this on customers already in financial difficulty.

Adequate and affordable payment options were current protections provided to energy customers and these protections appeared to be under threat for customers with continuing debts to Jackgreen regardless of whether they were paying off the arrears.

EWON had regular discussions about the Jackgreen situation with IPART and Industry & Investment NSW. In April 2010, the Deputy Director of the Energy Branch, Industry & Investment NSW, wrote to EWON to confirm the provision of assistance to former customers of Jackgreen through the NSW Government's Energy Accounts Payment Assistance (EAPA) scheme. The Minister for Energy approved a special arrangement with respect to those customers identified as owing debts for electricity consumption to Jackgreen and who were experiencing financial difficulty in paying these debts.

Under this arrangement EWON could recommend the allocation of EAPA (within the guidelines) for Jackgreen customers, particularly if this would prevent their debts being referred to debt collectors. EWON was able to recommend EAPA up to a total of \$70,000, and this was later increased by an additional \$5,000 as more customers in serious hardship were referred to EWON.

6. Challenges for EWON after the ROLR event

As at 18 December 2009, EWON was already dealing with a number of Jackgreen complaints. At that time we began to receive an increasing numbers of calls from Jackgreen customers who complained not about their ROLR, but about a variety of issues with particularly disputed bills, refunds, affordability issues, debt collection and credit default listing.

Liaising with the Administrators and Receivers

For the customers who contacted EWON in the period immediately following the ROLR event, we recorded the complaint issues and provided them with information in line with the advice from Industry & Investment NSW. Protocols were then put in place with the Jackgreen administrators and Receivers to enable EWON to assist in the resolution of customers' complaints. Some matters that were originally closed were re-opened, with a view to assisting resolution.

EWON provided a detailed open matters report to Jackgreen contact officers nominated by the Receiver. These officers provided account and billing records information, or outlined a proposed resolution to settle some matters on a commercial basis, or indicated that they still had the matter under review. Where customers advised EWON that they had been unable to speak with Jackgreen despite concerted efforts to contact them, we provided their contact details to Jackgreen with a brief outline of the complaint.

For some of these cases, Jackgreen emailed EWON to confirm the outcome of their follow up with the customer. For those cases where Jackgreen advised EWON that the customer had paid their account and any outstanding issues had been resolved, EWON rang or wrote to the customer to confirm Jackgreen's advice. While we acknowledged Jackgreen's information, we needed to confirm with the customer that they did not require further assistance from EWON.

This was particularly critical for those matters where Jackgreen stated that a payment plan had been arranged with the customer but no other details were provided. The Receivers had advised EWON in writing that they considered Jackgreen's customer hardship policy was no longer relevant to the company's changed circumstances and that they would pursue arrears more aggressively via referral to mercantile agencies. In view of this, EWON considered it necessary to review with each customer whether a realistic and manageable payment arrangement had been agreed to.

A number of customers disputed either current or previous accounts provided by Jackgreen. While EWON worked cooperatively with the Receiver in a working relationship that was new for both agencies, it was clear that there was potential for a number of matters to remain unresolved and in dispute. Equally it was clear that EWON's capacity to investigate these issues was limited. The final outcome for customers who were disputing their Jackgreen accounts was in significant doubt.

Jackgreen licence

Following the ROLR event the status of the Jackgreen licence was not clear, for example:

- If the licence was held by the Receivers, did obligations apply such as a requirement to provide information and suspend credit default listing or debt collection?
- If the licence no longer applied to Jackgreen, how was the Receiver able to send out a final bill in the name of Jackgreen and to accept EAPA payments?

In a meeting on 5 July 2010, the Minister for Energy advised EWON that he had written to the Administrators for Jackgreen (PKF) to ask them to show cause why the retail licence issued to Jackgreen should not be revoked.⁹ EWON advised that in our view it was difficult to see why the licence would not be revoked. It had been revoked for a company that triggered the first ROLR event in NSW¹⁰ who had far fewer customers and significantly fewer negative consequences for customers than compared with Jackgreen.

EWON position in assisting Jackgreen customers

EWON is an industry based Ombudsman scheme, funded by its members primarily on a user pays basis (ie the number of customer complaints/contacts). Even though Jackgreen was in the hands of Receivers and was no longer operating as an energy retailer, EWON was still working to resolve outstanding Jackgreen complaints, and then to deal with hundreds of complaints received after Jackgreen's suspension from the market.

The Receivers advised EWON that they did not agree to cover EWON's costs in relation to dispute resolution assistance for Jackgreen customers, although it is noteworthy that Jackgreen staff retained by the Receivers directly referred a number of customers to EWON for assistance. The Receivers advised instead that EWON might have a claim as an unsecured creditor.

The cost of EWON's assistance to former Jackgreen customers was significant (tens of thousands of dollars), and the lack of recovery of these funds resulted in a deficit for the scheme that will need to be managed by the EWON Board. Despite the lack of financial recovery for EWON's work to assist former Jackgreen customers, the Board was totally supportive of this.

This situation for EWON is raised in this report primarily to highlight a potential issue for ROLR provisions, where dispute resolution bodies may be required to assist customers in a context of limited or no funding.

⁹ No outcome regarding the licence at the date of this report.

¹⁰ The National Electricity Market Management Company (NEMMCO) issued Energy One with a suspension notice on 22 June 2007. Energy One's customers (5000 across Qld, NSW, the ACT and Victoria) were transferred to alternative retailers.

7. Conclusion

As yet there is no 'ending' for this report. At the end of August 2010, EWON was still working to finalise some outstanding Jackgreen matters, and we expect to receive further complaints in months, even years, to come. However, we consider it is important for this report to be provided to relevant stakeholders without further delay.

We believe there may be lessons in the demise of Jackgreen, particularly for the energy industry, government, and energy regulators. The mistakes of Jackgreen not only appeared to lead to their own demise, but had a severe negative impact on many NSW customers, including many financially disadvantaged and vulnerable individuals and families.

We hope that this report and any subsequent updates assist stakeholders to ensure that the Jackgreen mistakes are not repeated in an area of essential service.