



Independent Pricing and Regulatory Tribunal

# **Application for a Retail Supplier's Licence from Water Factory Company Pty Ltd**

**IPART's report to the Minister**

**Water — Ministerial Report**  
February 2013



# Contents

<b>1</b>	<b>Background</b>	<b>1</b>
<b>2</b>	<b>Submissions</b>	<b>2</b>
<b>3</b>	<b>Assessment of application</b>	<b>3</b>
3.1	Licensing criteria	4
3.2	Licensing principles	9
<b>4</b>	<b>Recommendations</b>	<b>9</b>



# 1 Background

Water Factory Company Pty Ltd (WFC) owns a number of subsidiary corporations including Pitt Town Water Factory (PTWF), Central Park Water Factory (CPWF), and Discovery Point Water Factory (DPWF). WFC has created these subsidiaries<sup>1</sup> to construct, operate and maintain its water industry infrastructure networks.

PTWF is licensed to construct, operate and maintain its network at a residential development at Pitt Town (licence number 10\_014). It has also been licensed to supply retail services to the customers of that development (licence number 10\_015R).

CPWF is licensed to construct, operate and maintain its network at a residential development at Central Park (licence number 12\_022).

We have received a network operator licence application from DPWF. We are currently in the process of reviewing this licence application.

On 20 March 2012, we received an application from WFC for a company-wide retail supplier's licence, under the *Water Industry Competition Act 2006* (the Act). In the past, retail supplier's licences have been linked to specific schemes.

WFC is seeking a common retail licence to cover all of its schemes. We support this initiative as we consider it will reduce "red tape". The majority of WFC's retail systems and procedures will be the same no matter which network it supplies, which lends itself to one licence.

WFC intends to supply one, or all, of the following services to its networks

- ▼ supply of non-potable water to replace potable water for toilet flushing, clothes washing, irrigation, cooling tower make-up, and general washdown of external surfaces
- ▼ supply of drinking water
- ▼ provision of sewerage services.

WFC intends to mostly supply services to networks owned by one of its subsidiaries. However, WFC also allows for the future possibility of supplying these services to other licensed network operators or public water utilities in NSW.

If WFC is granted a company-wide retail supplier's licence, we see the potential for efficiency if PTWF cancels its retail supplier's licence and WFC replaces it as the retail supplier. Currently, WFC is named as an authorised party on PTWF's

---

<sup>1</sup> The total number of subsidiary corporations owned by WFC is expected to increase in future, as WFC expands its operations.

retail supplier's licence because in practice, WFC's personnel manage supply of retail services at Pitt Town, using WFC's systems and procedures. Therefore, there would not be any benefit in WFC continuing to pay the annual licence fees to maintain PTWF's retail supplier's licence.

WFC will only supply non-potable water and sewerage services at Pitt Town, but customers at Central Park will receive all 3 of WFC's intended services (including supply of drinking water). WFC also intends to be the retail supplier at Discovery Point, if DPWF is granted a network operator licence.

In accordance with the Act, this report sets out our consideration of WFC's retail supplier's licence application, and submissions. In particular, we have considered whether WFC has satisfied the licensing criteria and considered the licensing principles. This report concludes with a recommendation to grant the licence. Further, the report proposes the conditions to which the licence should be subject.

## 2 Submissions

We must provide the application to, and invite submissions from, the following Ministers

- ▼ Minister administering the *Public Health Act 1991* (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (Minister for Primary Industries)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (Minister for the Environment and Minister for Heritage)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning and Infrastructure).<sup>2</sup>

On 8 August 2012, we sent the application to these Ministers, requesting their submissions by 19 September 2012.

We received submissions from the NSW Ministry of Health (NSW Health), Minister for Primary Industries, Minister for the Environment and Minister for Heritage, and the Department of Planning & Infrastructure (DP&I). We have made these submissions available on our website ([www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)).

The submissions supported WFC's application for a company-wide retail supplier's licence. NSW Health raised some matters for WFC to consider which are addressed in Section 3.1.5. The other Ministers and Government Departments did not raise any issues of concern.

---

<sup>2</sup> *Water Industry Competition Act 2006*, section 9(1)(b), and *Water Industry Competition (General) Regulation 2008*, clause 17(1)(a),(b).

We must also call for submissions on the application from the public.<sup>3</sup> On 15 August 2012, we advertised for public submissions in the Sydney Morning Herald and Daily Telegraph. On 19 September 2012, public submissions closed.

Only Sydney Water provided a public submission. Sydney Water supported WFC's company-wide retail supplier's licence application, and did not raise any issues.

### 3 Assessment of application

The Minister determines an application for a licence by granting the licence, or refusing the application, and determining the conditions to which the licence (if granted) should be subject.<sup>4</sup> The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant

- ▼ is not a disqualified corporation (ie, 'fit and proper' criteria)
- ▼ has, and will continue to have, the technical, financial and organisational capacity to carry out the activities to be authorised by the licence
- ▼ has the capacity to carry out its activities in a manner that does not present a risk to public health or a significant risk of harm to the environment
- ▼ has, and will continue to maintain, appropriate insurance arrangements
- ▼ in the case of a licence to supply water, will supply sufficient quantities of water that has not been obtained from a public water utility
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.<sup>5</sup>

In considering whether or not to grant the licence, and what conditions (if any) to impose on the licence, the Minister must also have regard to the following licensing principles

- ▼ protection of public health, the environment, public safety and consumers
- ▼ encouragement of competition in the supply of water and the provision of sewerage services
- ▼ ensuring sustainability of water resources
- ▼ promotion of production and use of recycled water.<sup>6</sup>

The following sections of this report are structured to address each of the licensing criteria and principles outlined above.

---

<sup>3</sup> *Water Industry Competition Act 2006*, section 9(1)(c).

<sup>4</sup> *Water Industry Competition Act 2006*, section 10(1).

<sup>5</sup> *Water Industry Competition Act 2006*, sections 10(3) & (4).

<sup>6</sup> *Water Industry Competition Act 2006*, section 7.

Finally, for a retail supplier's licence to supply water, the Minister needs to be satisfied that an applicant will supply sufficient quantities of the water from sources other than from a public water utility, in accordance with section 10(4)(d) of the Act. This is addressed in section 3.1.8.

### 3.1 Licensing criteria

#### 3.1.1 Disqualified corporation

**WFC is not a disqualified corporation.**

In making this assessment, we considered the following information.

- ▼ The statutory declarations made by WFC's Managing Director and Chief Operating Officer, stating that neither WFC, nor any director or person concerned with managing WFC, is a disqualified corporation or disqualified individual, within the meaning of the Act.
- ▼ Results of the ASIC and ITSA searches provided in the Dun & Bradstreet report that we have obtained, confirming the above.
- ▼ Results of our search of the *Water Industry Competition Act* licence database.<sup>7</sup>

#### 3.1.2 Technical capacity

**We are satisfied that WFC has adequate technical capacity to supply water (both potable and non-potable) and provide sewerage services to its intended customers.**

We have based our assessment on the information that WFC provided with its retail supplier's licence application, and through subsequent information requests. In addition, we considered the submissions from other regulatory authorities consulted, none of which raised any concerns over WFC's technical capacity.

WFC has established systems, procedures and personnel which have been previously approved when PTWF was licensed to supply retail services at Pitt Town. WFC is an authorised party on the PTWF retail supplier's licence and supplies all retail services at Pitt Town. WFC will use the same systems and resources to supply services at all of its intended networks.

WFC will use the Retail Supply Management Plan (RSMP) that it developed for Pitt Town as a model for all of its networks. The model RSMP addresses the supply of non-potable water and provision of sewerage services.

---

<sup>7</sup> There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f), this being the second application.

We do not consider that special licence conditions are necessary if a company-wide retail supplier's licence is granted.

We consider that the licence should prescribe the networks where WFC is allowed to supply retail services. If WFC wants to include a new network to the licence, it should apply for a licence variation prior to commencing supply to that network. Further, WFC should provide us with the following information as part of the licence variation request

- ▼ details of any project-specific risks not included in the model RSMP
- ▼ details of WFC's contingency arrangements to minimise retail risks
- ▼ evidence of discussions/agreements with public water utilities or other privately owned network operators to supply retail services
- ▼ evidence of discussions/agreements with prospective customers about retail services
- ▼ evidence that WFC is compliant with section 10(4)(d) of the Act.

We intend to audit WFC's retail supply arrangements at its networks, once it has established a significant customer base.

### 3.1.3 Financial capacity

**We are satisfied that WFC has adequate financial capacity to supply the proposed retail services.**

We reviewed WFC's financial capacity in December 2012, together with the assessment of CPWF's financial capacity to undertake the activities authorised by its network operator licence. As CPWF is a subsidiary of WFC, the financial capacities of the 2 corporations are linked.

We contracted an external financial consultant, Vincents Chartered Accounts (Vincents), to assess WFC's (and CPWF's) financial capability.

Vincents was satisfied that WFC adequately demonstrated its ongoing financial capacity to maintain business operations.<sup>8</sup> As this is a retail supplier's licence application (ie, not involving any construction activity), we consider this assessment acceptable for the purpose of considering the retail licence application.

We would like to emphasise that the limited information available allows for assessment at one point in time, and granting a licence should not be viewed as endorsement of the future viability of the company. The assessment is based on a combination of information sources, none of which is to be regarded as

---

<sup>8</sup> Vincents Chartered Accountants, Water Industry Competition Act Updated Financial Capacity Review in respect of the applicant Central Park Water Factory Pty Ltd, December 2012.

individually determinative. This assessment is done for our own purpose, and for the Minister's purposes in assessing the Applicant's application. The conclusion is not to be relied on for any other purpose, or by any other person.

### 3.1.4 Organisational capacity

**We are satisfied that WFC has adequate organisational capacity (current and ongoing) to supply services to its intended customers, in a manner that would protect public health and the environment.**

WFC's application included details of

- ▼ the previous experience of its key personnel
- ▼ WFC's corporate structure.

WFC owns a number of subsidiary corporations including PTWF, CPWF and DPWF. These subsidiary corporations are formed to construct, operate and maintain water industry infrastructure which WFC will use to supply customers with retail services.

WFC draws on the experience of its key personnel to supply retail services. We reviewed the Curriculum Vitae of the key personnel as evidence and are satisfied that their experience is adequate. The same personnel have been previously approved to supply services at Pitt Town, under PTWF's retail supplier's licence (10\_015R). WFC does not intend to use third parties to supply any retail services.

We recommend that the standard ministerially imposed licence condition should be included in the licence, which requires the licensee to report to us immediately if it ceases to have the technical, financial or organisational capacity necessary to carry out the activities authorised by the licence. We do not consider that any additional special licence conditions are necessary.

### 3.1.5 Public health

**We are satisfied that WFC is capable of supplying retail services by means of water industry infrastructure, in a manner that protects public health.**

We assessed this capability as part of the technical, financial and organisational capacity assessments.

NSW Health supports WFC's company-wide retail supplier's licence application, provided the following requirements are met.

- ▼ WFC should develop a project specific RSMP for each network, with NSW Health's input, prior to commencing to supply retail services.

We consider that it would be adequate for WFC to use its model RSMP at its future networks, provided it submits to us all relevant project specific information, as explained in section 3.1.2. We will make the information available to NSW Health and seek its input, to ensure that all relevant health matters have been addressed.

- ▼ WFC should allow NSW Health the opportunity to comment on an example RSMP that includes arrangements for supplying drinking water.

The model RSMP does not address supplying drinking water, as it was developed for use at Pitt Town where WFC does not supply this retail service. If WFC is granted a company-wide retail supplier's licence, it will supply drinking water at Central Park. WFC has separately explained its arrangements for supplying this retail service, as part of its CPWF network operator's licence application.<sup>9</sup> We sought NSW Health's input when we reviewed this information. We intend to follow this procedure for any future networks where WFC will supply retail services.

- ▼ WFC should consult NSW Health prior to commencing supply of retail services to a network, to ensure that all relevant health matters have been addressed.<sup>10</sup>

We will consult NSW Health when reviewing any information received about new networks that WFC wishes to include in its company-wide retail supplier's licence.

If the Minister grants the company-wide retail supplier's licence, we will formally advise WFC of NSW Health's and our requirements for including new networks to the licence.

We recommend that the standard ministerially imposed licence condition should be included in the licence, which requires the licensee to comply with any requirements of NSW Health that we have agreed to, and that we have notified the licensee about, in writing. We do not consider that any additional special licence conditions are necessary.

### 3.1.6 Environment

**We are satisfied that there are no environmental impacts arising from WFC's proposed activities as a retail supplier at Pitt Town or Central Park.**

The environmental impacts at these networks are primarily associated with the construction and operation of the water industry infrastructure.

---

<sup>9</sup> Central Park Water Factory Company Pty Ltd, Network Operator Licence Application Attachment E, Water Industry Competition Act 2006, October 2011.

<sup>10</sup> NSW Department of Health's submission to the Independent Pricing and Regulatory Tribunal (IPART), in response to WFC's application for a Company-wide retail supplier's licence.

We note that the environmental impacts at any of WFC's networks will need to be reviewed when we assess the relevant network operator's licence applications.

### **3.1.7 Insurance**

**We are satisfied with WFC's existing insurance arrangements.**

Our assessment of WFC's insurance arrangements was based on the information provided as part of WFC's retail supplier's licence application, including updated certificates of currency.

We recommend that the standard ministerially imposed licence conditions are included in the licence, which requires the licensee to obtain and maintain appropriate insurance, as determined by an independent Insurance Expert. We do not consider that any additional special licence conditions are required.

### **3.1.8 Sufficient quantities of water not from a public water utility**

**We are satisfied that WFC has satisfactorily met this criterion.**

The Minister needs to be satisfied that an applicant for a retail supplier's licence will supply sufficient quantities of water from sources other than from a public water utility.

We consider that WFC has satisfied this requirement at Pitt Town and Central Park, as conditions of its subsidiary licences. WFC's compliance with this criterion will need to be assessed for each network where it intends to supply services. We consider that the best way to deal with this would be to require WFC to apply for a licence variation, each time WFC intends to supply retail services a new licensed network. This would allow us to assess whether WFC continues to comply with this requirement of its retail supplier's licence, if granted, as its business expands and it enters into new supply/network areas.

We recommend that the standard ministerially imposed licence condition is included in the licence, which requires the licensee to ensure that sufficient quantities of the water supplied to customers have been obtained otherwise from a public water utility. We do not consider that any additional special licence conditions are required.

### 3.2 Licensing principles

**We are satisfied that granting a retail supplier's licence to WFC is consistent with the licensing principles.**

We considered each of the following licensing principles in making a recommendation as to whether or not the licence should be granted, and what licence conditions to impose.

- ▼ Protection of public health, environment, public safety and consumers. In particular, we and NSW Health considered whether WFC has the technical capacity to undertake the retail activities in a way that would manage the risk to public health, public safety, and consumers at an acceptable level. Full details of the assessment are detailed above.
- ▼ Encouragement of competition. WFC has proposed to supply non-potable water, sewerage services, and in some cases, drinking water to residential, commercial, light industrial and agricultural customers. The retail services will be supplied to customers in direct competition with existing sewerage services and drinking water supply.
- ▼ Ensuring sustainability of water resources. Non-potable water will be supplied to substitute potable water for uses such as toilet flushing, clothes washing, cooling tower make-up, general washdown of external surfaces, and irrigation. The non-potable water will be sourced from sewage collected from residents' dwellings that would otherwise be discharged to sewer.
- ▼ Promotion of production and use of recycled water is fundamental to WFC's proposed schemes.

## 4 Recommendations

In determining the licence application, the Minister must consider, but is not bound to accept, any advice or recommendation in this report and may, if circumstances so require, seek further advice from us in relation to the application.<sup>11</sup>

**We are satisfied that WFC has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.**

**We recommend that the Minister grants a company-wide retail supplier's licence to WFC, subject to the conditions set out in licence number 13\_001R.**

**We also recommend that the licence should limit WFC to only supply retail services for the networks listed in Schedule C of the licence. If WFC intends to**

---

<sup>11</sup> *Water Industry Competition Act 2006*, section 10(2).

**supply retail services for a new network, it should apply for a licence variation to include that network to the licence.**

On making a decision whether or not to grant the licence, the Minister is required to provide us with a notice of the decision, and of the reasons for the decision.<sup>12</sup> We will then make the information in the notice available to the public on our internet website, in accordance with the requirements of the Act.<sup>13</sup>

---

<sup>12</sup> *Water Industry Competition Act 2006*, section 10(5).

<sup>13</sup> *Water Industry Competition Act 2006*, section 10(6).