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The Independent Pricing and Regulatory Tribunal
Level 2, 44 Market Street
SYDNEY NSW 2000

Attention: Michael Sedwell

Review of Hunter Water Corporation operating licence

The Nature Conservation Council appreciates this opportunity to contribute to the review of the Hunter Water Corporation's operating licence.

Our submission is attached.

Yours sincerely,

Robert Pallin
Chairperson.

Nature Conservation Council of NSW Inc.

Submission to

Independent Pricing and Regulatory Tribunal

on the review of the

Hunter Water Corporation Operating Licence

September 2001

1. introduction

The Nature Conservation Council of NSW is pleased to contribute to the review by the Independent Pricing and Regulatory Tribunal (IPART) of the Hunter Water Corporation (HWC) operating licence.

This submission responds to matters raised in the issues paper produced by IPART and to some of the statements made in the HWC submission.

The HWC submission is disappointing. HWC's rhetoric is supportive of the regulatory system constituted by an operating licence and the annual auditing of its performance under the supervision of an independent regulator, but HWC's specific recommendations do little to promote the effectiveness of the system.

Some aspects of HWC's environmental performance are impressive. These include the low per capita water consumption among its residential customers, and the large amount of wastewater water re-used by its industrial customers.

Other aspects of HWC performance are not so creditable. HWC is in a comfortable financial position compared with most other water authorities even though the households it supplies have incomes below the state average. HWC would appear to have scope to put resources into non-price approaches to water conservation and to rely less on price to reduce demand. HWC should also reduce the loss of water leaking from its pipes which is apparently greater than for any other major urban water authority in Australia.

2. Legislative Basis for HWC Operations

The NSW Government should review the legislation under which HWC operates and which provides the framework for HWC's operating licence and the annual auditing of its performance. The continuing lack of a common legislative and operating licence framework for the Sydney Water Corporation and the Hunter Water Corporation is a notable example of bad public administration. These are two urban water authorities with a similar range of functions, albeit with differences in scale and operating in distinct environments. Allowing for the differences, there is no reason why their statutes and operating licences should be so dissimilar. This lack of commonality is wasteful of community resources. It makes regulation and auditing more complex than it needs to be, more difficult to establish industry benchmarks, and less likely that regulators will be able to draw useful comparisons from licence audits. HWC is not accountable for its performance to the same extent as SWC

because HWC operating licence audits are not required to be tabled in Parliament, and reviews of HWC's operating licence are not subject to the same level of public scrutiny. HWC's licence is also for a different term. It seems that HWC is content to let these anomalies continue. HWC's Act and operating licence should be brought into line with the SWC Act and operating licence as soon as possible.

3. Approach to Licence Regulation

IPART's discussion paper suggests a range of possible approaches to licence regulation in relation to HWC. At this stage the 'prescriptive approach' (option 1) is strongly preferred. Other options might be considered some years hence when HWC and the other licenced water utilities may have developed a culture more attuned to effective external regulation. Where HWC is to be required to produce plans or strategies expanding the scope of its operating licence these documents should form fully auditable components of the operating licence. Such plans and strategies should go through a public process before being formally approved by IPART and adopted by HWC, and must not be able to be unilaterally altered by HWC.

4. Reviews of Operating Licence

HWC has suggested that its licence should be reviewed at end of term. Assuming the licence term is brought into line with SWC, that would mean reviews would take place at five year intervals. This is too long a period between reviews and will not allow timely adjustment of the operating licence. The operating licences of the Sydney Water Corporation and Sydney Catchment Authority are subject to mid-term and end of term reviews and there is no reason why HWC should be treated differently. NCC requests that the HWC operating licence be subjected to both mid-term and end of term reviews, that is at two to three years and at five years.

5. Other Regulators

Like other water utilities whose licences are regulated by IPART (SWC and the Sydney Catchment Authority), HWC is subject to regulatory oversight by regulators such as the EPA and the Department of Health.

HWC complains in its submission of 'regulatory duplication' and argues that the operating licence should not impose environmental protection requirements as these are covered by EPA licence conditions. Similarly it is argued that demand management requirements need not be imposed in the licence as these are covered by the water licence granted by the DLWC.

This 'regulatory duplication' argument is not accepted. Nearly every thing that could be addressed in the operating licence comes within the scope of one or other specialist regulator so, carried to its logical conclusion, the 'regulatory duplication' argument leads to an operating licence with nothing in it.

HWC is a government body with a virtual monopoly for the provision of services within an extensive geographical area. The government and the community reasonably expect that HWC will be accountable for the whole of its performance. In the past HWC was accountable to the Minister who was in turn accountable to Parliament. Now that HWC is a corporatised agency, it is to a large extent removed from Ministerial control and direction and allowed to operate along commercial lines. The Government decided that HWC should have an operating licence (together with annual performance audits and the threat of penalties) to ensure that HWC remained accountable for its performance. If HWC is to be accountable for the whole of its performance then the operating licence must be comprehensive in scope.

There is nothing unusual in different regulators focussing on the same activities by a regulated entity in the course of carrying out their different regulatory roles. Nor is there anything inherently inefficient in this. Inefficiencies might arise if different regulators require conflicting standards to be met by the operator, or require it to take opposing actions, or to meet uncoordinated reporting or measuring requirements; these situations can and should be avoided.

HWC makes much of the role of the Department of Land and Water Conservation (DLWC) as a regulator of HWC through its water licence. However the DLWC is subject to serious functional conflicts which might be expected affect its role as a regulator. For example, the DLWC is the operator of State Water, which is in the business of selling very large volumes of water to customers throughout rural NSW. HWC has suggested in its submission that its demand management performance should be regulated solely by DLWC through its water licence, and that IPART should seek no regulatory role in this area through HWC's operating licence. This is not acceptable.

6. Water Conservation and Re-use

HWC should be required under the new operating licence to produce a draft Water Conservation and Re-use Strategy (WCRS) showing how it proposes to further water conservation and wastewater re-use. The new operating licence should specify all the matters to be addressed in the strategy. The strategy should address both price and

non-price approaches to demand management. The draft WCRS should be subject to a public consultation process and approved by IPART. When approved it should become fully auditable as an integral part of the operating licence.

As part of the current operating licence review, IPART should request HWC to propose a range of targets and measures to be either written into the operating licence or the WCRS.

One of the targets to be set should require HWC to significantly reduce water leakage over the licence term. This was reported in 1999/2000 at 15.5% of all water supplied from HWC's bulk water storages, apparently the highest overall loss of water reported by any metropolitan water authority in Australia.

Water Conservation and re-use among industrial customers

It is accepted that specifying a water conservation and reuse target for HWC's industrial customers is not a simple matter due to the varying conditions and requirements that affect particular industrial undertakings, and the volatility of the sector as substantial users move in and out of the market, or modify their operations. The draft water conservation and re-use strategy should nevertheless provide a range of options for setting water conservation and water reuse targets or objectives for this sector, and for measuring performance.

Water conservation target for residential customers

HWC's residential consumers used an average 195.86 kilolitres of water per residential property in 1999/2000. This is a significantly less than the water used by Sydney Water customers. Nevertheless, HWC should still be required under the terms of its licence to meet a specified water conservation target for residential customers. Hunter Water should be required by its new operating licence to hold residential consumption at or below the 1999/2000 level. The operating licence should also require that the water conservation target be revisited at the mid-term review and requiring a determination to be made then as to whether the water conservation target can be improved and if so to what level.

7. Environmental Management Plan

The HWC Environmental Management Plan (EMP) is not, strictly speaking, an auditable document under HWC's legislation, and consideration of the EMP in the annual audit has proceeded on a concessional basis. HWC has never accepted that

‘non-compliance’ findings can be made by the auditor in respect of any EMP requirement. Even if EMP requirements were fully auditable it would be difficult to justify any non-compliance findings as the EMP contains few, if any, quantified measures or targets against which Performance could be objectively assessed. The EMP is essentially an internal management document in which targets and actions are set unilaterally by HWC and which are changed by HWC from time to time without reference to its licence regulator or anyone else.

HWC should be required under the terms of its operating licence to prepare a draft EMP to be formally approved by IPART and adopted by HWC after a prescribed public consultation process. The matters to be addressed in the EMP should be particularised in detail in the new operating licence. Once the EMP has been approved and adopted, it should be fully auditable as an integral part of the operating licence.

8. Ecologically Sustainable Development (ESD) Indicators

HWC should be required to produce comprehensive draft ESD indicators to be approved by IPART after a prescribed process of public consultation. Once approved and adopted, the indicators should form an integral part of the operating licence and HWC’s performance should be audited against them.

9. Energy Management policies and targets

Energy management policies and targets should be included in the HWC operating licence.

10. Water Resources and Catchment Management

The HWC operating licence should require that the water resources and catchment management obligations of HWC (whether imposed by its own legislation or imposed on it by other regulators) be reported upon in annual audits.

11. Drinking Water Quality Standards

HWC must supply drinking water of similar or better quality and meeting the same standards as SWC. As required of SWC, HWC should be required to comply with revisions to health-related aspects of the Australian Drinking Water Quality Guidelines where specified by the NSW Department of Health. HWC’s

memorandum of understanding with the Department of Health should be incorporated in the new operating licence.

12. System Performance Standards and Measures

It is understood that IPART has retained Halcrow consultants to advise on system performance standards to be included in the new HWC operating licence. NCC reserves the right to comment further on this aspect after the consultant's report has been received and considered. It is hoped that the consultant will throw some light on questions such as, inter alia, the potential for HWC performance standards to be made consistent with the standards required to be met by SWC and other utilities.

It is noted that in a previous report to IPART on NSW Water Agencies (December 1999) Halcrow commented that the standards of service set by the HWC operating licence are not a comprehensive reflection of customer expectations of water services.

It is also noted that HWC has generally out-performed the system performance standards, giving it little incentive to improve its performance.

System performance standards and the methods by which they are to be measured should be fully defined either within the operating licence or in a fully auditable document referred to in the operating licence.

13. Maintenance of water, wastewater and stormwater systems

HWC's current operating licence does not address stormwater or drainage services, other than EMP requirements which refer to HWC's participation in catchment management committees. This is inadequate compared with stormwater responsibilities met by other water utilities in Australia. Standards or indicators for stormwater performance should be inserted in the new operating licence.

It is noted that the current operating licence does not support service levels for the stormwater system, or the management of assets that make up the water supply system or the wastewater system. These deficiencies should be rectified in the new operating licence.

14. Asset Management

HWC is responsible for the maintenance of assets worth nearly \$2 billion. Its operating licence should require it to maintain an asset management system and to

have it reported on independently at the mid term review of the licence and at the end of the licence term.

15. Utilities Licence Auditing Advisory Committee

IPART's Act establishes and confers certain functions on a Utilities Licence Auditing Advisory Committee (ULAAC) made up of nominees from various community interests including protection of the environment. The role of this committee is to furnish advice to IPART on the scope and methodology of audits conducted under its licence auditing functions. The legislation which established ULAAC was passed by the NSW Parliament about 15 months ago and assented to about 10 months ago. Nominations to ULAAC were called for and received by the NSW Government some five months ago. The NCC considers it deplorable that ULAAC has not been constituted in accordance with legal requirements and that this important element of the regulatory system for major water and energy utilities is missing.

End.