

Our Ref:

Mr Michael Sedwell
c/o Independent Pricing and Regulatory Tribunal
Level 2, 44 Market St
Sydney 2000

By email: michael_sedwell@ipart.nsw.gov.au

19/9/01

Dear Michael

Re : Review of Hunter Water's Operating Licence

Please accept the attached submission to the Tribunal's review of the Hunter Water Corporation's Operating Licence. I trust these comments will be of assistance to the Tribunal and the Secretariat. As always, I am happy to expand on or clarify anything in the submission if required.

Yours sincerely
Public Interest Advocacy
Centre

Jim Wellsmore
Policy Officer

(enc)

1. Introduction

This submission is made pursuant to the review of System Performance Standards in Sydney Water Corporation's Operating Licence being conducted by the Independent Pricing and Regulatory Tribunal (IPART). A number of comments are made in response to the Tribunal *Issues Paper* released for this review in December 2000.

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney. Established in 1982 it strives to foster a fair and just society by empowering disadvantaged citizens, consumers and communities through strategic legal and policy intervention in public interest issues. PIAC has established the Utility Consumers' Advocacy Program (UCAP). This is funded by the NSW Government.

The main aims of the project include :

- developing policy;
- advocating on behalf of residential consumers of gas, electricity and water services;
- identifying systemic problems with utility service providers;
- ensuring that consumer protection mechanisms work effectively; and
- facilitating the development of partnerships between stakeholders in utility service provision.

2. Common performance reporting

The Public Interest Advocacy Centre has expressed repeatedly its support for the introduction of comparative competition and the use of 'league table' reporting of the performance of the NSW utility businesses. As the Tribunal has noted in its *Issues Paper* published for this review, such an approach has been constrained by the range of standards and indicators that have been applied in respect of the NSW businesses. The implication is that this review provides an opportunity for progress towards a more uniform regime for performance monitoring and reporting.

PIAC supports any move by the Tribunal to create a more uniform set of arrangements. Clearly, the operating licences are the appropriate place to achieve this. For these reasons, this submission will point to a number of the monitoring and reporting obligations expected to be introduced to the Sydney Water Corporation which we consider appropriate to be applied to Hunter Water.

However, in changing the performance reporting arrangements, the over-riding issue is the need for the benefits to consumers to exceed any costs to the businesses – since those costs will be passed through to consumers. The water services utilities, in particular, are not operating in a competitive environment. So the aim is not to provide for a more dynamic or efficient market. Instead, comparative reporting should be designed to provide incentives for the businesses to improve their performance on behalf of consumers.

Given the different sizes and geographical areas of operation of Sydney Water and Hunter Water there will continue to be some difficulties in the making of comparisons of absolute performance. This suggests that comparative reporting might be limited in the scope and range of areas it covers. For consumers, the key concern is whether or not Hunter Water, in this instance, is improving its performance over time and how that rate of change compares with related businesses.

3. MoU with NSW Health

The Tribunal seeks comments on whether the requirements specified in Hunter Water's MoU with NSW Health should be included in the Operating Licence.

Memoranda of Understanding between NSW Health and the water services agencies have taken on particular significance in recent years. At present, the MoU between Sydney Water and NSW Health is negotiated with the proviso that in the case of disagreement over the contents it is the views of the regulatory agency that shall prevail. PIAC argued for a tighter set of controls during last review of the Sydney Water Operating Licence, proposing that the Licence spell out clearly the lead role of NSW Health in making judgements affecting public health and regarding compliance with water quality guidelines.

On the other hand, none of these qualifications or constraints are imposed on Hunter Water when negotiating a MoU with NSW Health. The different treatment of the responsibilities of these two agencies reflects that their respective statutory and regulatory frameworks have not evolved in parallel. PIAC is of the view there is a strong case for Hunter Water's Operating Licence to detail minimum requirements for the MoU with NSW Health including:

- the role of NSW Health in relation to the provision of safe drinking water;
- that where any dispute between the agencies remains unresolved the view of NSW Health shall prevail; and
- the respective roles of the agencies in the case of an incident of significance to public health, including the operation of a drinking water quality incident management plan.

4. System Performance Standards and Measures

The Tribunal seeks comments on whether the system performance standards in Hunter Water's Operating Licence should be made consistent with the standards of Sydney Water and other utilities.

It is important to note the difficulty in determining what it is that customers or the wider community actually want in terms of system performance. Questions

of engineering and possible trade-offs between price and service make this a fraught area of debate indeed. Accordingly, the standards created for the Operating Licence can provide little more than a proxy for consumer preferences – they highlight the key areas where consumers expect or demand a water services utility would be concentrating its efforts.

The issue with the performance standards described in Hunter Water's current Operating Licence is not that they are inherently flawed or manifestly inadequate. Rather, as noted above, the licences for Hunter and for Sydney Water have not evolved in parallel. As a result, Hunter Water's licence obligations for the performance of its water and sewerage systems may now be out of step with the legitimate expectations of the community.

PIAC believes that the standards for Hunter's system performance should be consistent with those proposed in the Tribunal's Report to the Minister for Energy and Utilities on the review of the Sydney Water Operating Licence. This is an important step to effective comparative reporting of performance. Further, the structure of the standards proposed for Sydney Water is intended to provide for a steady increase in performance over time. Finally, uniformity is an important consideration for consumers who should be able to enjoy similar levels of performance irrespective of where they live in the broader coastal urban area.

The Tribunal's report also details proposals for a series of performance indicators in relation to water pressure, continuity of supply and sewerage. It is likely that not all these indicators will be appropriate for Hunter Water. In particular, with a smaller customer base a requirement to collect and report this wider range of data may impose disproportionate costs onto Hunter Water and consumers. It may be preferable to delay the introduction of more than a few new indicators in order first to gain a better understanding of the performance data being collected by Sydney Water under the terms of its Operating Licence. If this review does establish a fixed term for Hunter Water's Operating Licence there will be an opportunity to revisit the question of appropriate indicators at a date not too distant.

This is a desirable course in the light of the yet-to-be-completed review by the Tribunal of the licencing regime for the electricity and gas industries in NSW. While the benefits of comparative reporting likely will be observed within single industries, in this case between the two major metropolitan water businesses, it appears that over the next few years there will be further opportunities to standardise performance measures in areas such as customer service.

It is noted that Hunter Water itself has proposed that the Operating Licence specify a number of new indicators. We look forward to exploring these issues further with the Tribunal and Hunter Water. For our part, PIAC considers that, of those indicators proposed for Sydney Water, the most appropriate for Hunter Water are:

- the number of properties which receive less than the mandated pressure level as a result of abnormal operations;

- where a discontinuity of supply has occurred, the number of properties where the time elapsed since the previous interruption is less than six months or less than 12 months;
- disconnections, restrictions of supply and debt recovery action arising from non-payment;
- average annual distribution losses;
- the number of dry weather uncontrolled sewage overflows affecting private land, public land and both private and public land;
- time taken to provide a substantive response to customer complaints and account contacts; and
- those bills issued to metered accounts but not based on an actual meter read.

5. Demand Management and Water Efficiency

The Tribunal seeks comments on whether Hunter Water's Operating Licence should include incentive for Hunter Water to manage the demand for water in its area.

As noted in the Tribunal's *Issues Paper*, in the case of Hunter Water price has been previously been the focus of demand management efforts. The early introduction of user-pays pricing for Hunter's customers had a one-off but significant impact on per capita water use throughout its area of operations. The Tribunal will be aware that PIAC has in a number of forums argued strongly against attempts to use price in this way. In any event, it seems clear that demand management strategies need not rely on price

Sydney Water has achieved considerable reductions in per capita consumption and expects to achieve yet more reductions going forward by using a range of initiatives other than price. Crucially, these initiatives include a comprehensive leakage reduction program targeted at the Corporation's distribution system.

The value to the wider community of such an approach has been highlighted in a submission by the Roads and Traffic Authority to the Tribunal's review of the Sydney Water Customer Contract. In commenting on the impact of the operations of the water utility on the Authority's area of responsibility, the RTA made the point that:

Road maintenance costs may be increased and traffic safety and congestion issues arise if Sydney Water mains located in the road leak or otherwise require attention.

Within NSW it is widely accepted now that major utilities in both water and electricity will face obligations for demand management. The community expects that strategies will be put in place to reduce per capita consumption both because of the environmental benefits and the reduction in costs over the longer term. PIAC considers that Hunter Water is in a position to embrace such new obligations and to develop an appropriate range of initiatives to tackle such demand management issues as distribution system losses.

A further key component of the approach to demand management adopted by Sydney Water has been the development of a retrofit program for residential consumers and a community education initiative. For example, Sydney Water is required by its Operating Licence to support the National Water Conservation Rating and Labelling Scheme. It is noted that this and similar programs provide a range of benefits to the community through:

- reducing environmental impacts of water use;
- assisting the deferment of capital investment; and
- enabling consumers to reduce the size of their household water bills.

There is no doubt that Hunter Water is aware of such wide ranging benefits, having recently elected to join with other utility, government and community organisations in supporting the REFIT program piloting energy efficient retrofits to low-income households throughout the Lower Hunter region. Given this commitment by Hunter Water it seems appropriate that the Operating Licence should mandate participation in the National Water Conservation Rating and Labelling Scheme.

6. Customer and Consumer Rights

As the Tribunal notes in its *Issues Paper*, the current Hunter Water Customer Contract places most emphasis on the rights of Hunter Water. It might appear to a casual reader that Hunter Water's customers have few legitimate expectations of their relationship with the utility other than the supply of water and sewerage services and the receipt of an occasional bill. In this respect, the Sydney Water Customer Contract provides a much better template for the balancing of rights and obligations - particularly in the amended form which might arise from the Tribunal's current review of the Sydney Water instrument. PIAC is confident that this alternative approach is more reflective of the manner in which Hunter Water and its customers and consumers would prefer to manage their relations.

In particular, the Customer Contract needs to be improved in relation to:

- *Providing for a regular billing of customers*

The current provision (section 4.1(a)) whereby Hunter Water is free to vary the billing period is likely to create hardship for many households. It also seems to be at odds with Hunter Water's own commercial needs in terms of providing a steady income stream. Some commitment to, for example, quarterly bills, is entirely reasonable.

- *The delivery of bills*

The provision allowing Hunter Water to select the address to which it will deliver bills (section 4.1(b)) suggests the Corporation is not utilising a modern customer information database. It also raises the possibility of adverse outcomes for customers and consumers given the notice required to be given for disconnection following no-payment of bills.

- *The calculation of estimated reads*

In cases where a meter is not registering correctly, Hunter Water is empowered to levy charges as it sees fit and at a level which it considers reasonable (section 3.5 (a)). The stipulation that charges are to be 'reasonable' appears to place on the customer or consumer the onus of demonstrating that this is not the case. This clearly fails the principle suggested by the Tribunal of customer contracts being transparent. It is noted that the Customer Contract does provide a means for calculating charges when price changes have taken effect during a billing period (section 8.1).

- *Notice of disconnection or restriction of supply*

The Customer Contract presently provides for disconnection of a customer with no more than 24 hours notice in circumstances where disconnection is being effected for reason of non-payment of a bill (section 11.3 (b)(i)). This is clearly far from an acceptable arrangement and PIAC understands that, in fact, Hunter Water's practice is to provide notice of a period significantly longer than 24 hours. The Customer Contract ought to be amended to reflect at least the current practice of the Corporation.

- *A code of practice for customer debt and disconnection*

Considerable discussion about the role of such a code within a customer contract was undertaken as part of the Tribunal's review of the Sydney Water Customer Contract. While the precise terms of the Sydney Water code of practice may not be appropriate for Hunter Water, PIAC believes the Customer Contract should incorporate a broad description of the processes used to deal with customer debt and the escalation towards discontinuance or restriction of supply.

- *Customer complaint handling*

Hunter Water's Customer Contract is silent about the processes to be employed when dealing with a complaint from a customer or consumer or in seeking to resolve such complaints. We believe that an up-to-date customer contract should make clear to the community that a business has a transparent and objective process for responding to complaints and concerns. Further, the Customer Contract should contain the stipulation contained in Sydney Water's Customer Contract that obligations for complaint handling and complaint resolution procedures are to be read as applying equally to consumers.

The *Issues Paper* has also raised the matter of Hunter Water's current Customer Charter and whether this ought to be incorporated into the Customer Contract. In broad terms, PIAC would tend to the position that a requirement for a set of commitments such as those detailed in the Charter ought to be codified in the Customer Contract. In the case of Sydney Water the Customer Contract establishes both the standards of service and the rebates available to customers in certain circumstances. The view of PIAC on standards of service being incorporated into the Customer Contract has been set out earlier in this submission. The question of the treatment of rebates is expected to be shaped largely by the recommendations made by the Tribunal to the Minister for Energy and Utilities as a result of the review of the Sydney Water Customer Contract.

7. Community consultation

The Tribunal's *Issues Paper* has raised the question of whether there is a need to improve Hunter Water's Operating Licence obligations in relation to community consultation. It is acknowledged that Hunter Water's actions in this area have exceeded the requirements of the Licence, for example through the establishment of a Consultative Forum. PIAC has had considerable input into the development of the obligations imposed on Sydney Water and, more recently, the NSW electricity distributors, in relation to customer consultative groups. Based on this experience, PIAC is comfortable in proposing that the broad scope of the requirements found in the Sydney Water Operating Licence be incorporated into Hunter Water's licence. It is envisaged further discussions between Hunter Water, representatives of the local community, the Tribunal and PIAC would assist in the formulation of the precise terms of any such new obligations.

8. Public Reporting

The Tribunal seeks views on the appropriate term of Hunter Water's Operating Licence.

The view of PIAC is that a 5-year term for Hunter Water's Operating Licence would be appropriate to provide a balance of certainty and flexibility as is accorded Sydney Water. It is suggested that the Tribunal give consideration to preserving the current timing of the respective terms of these two instruments, ensuring that commencement and reviews are not simultaneous. This will result in some measure of uneven development of the respective licence regimes of these two utility businesses such as has been noted above. On the other hand, the greater frequency of Licence reviews established by a five-year term will limit the extent of this problem. Importantly, staggering the commencement of the operating licences will ensure that both the Tribunal and key stakeholder groups, such as the representatives of residential consumers, will be better able to commit the necessary resources to future reviews.