

Summary of discussion — ACCC public forum on water infrastructure charge rules

Location: The Grace Hotel, 77 York Street, Sydney
Date: Thursday, 30 April 2009
Time: 10 am – 12 pm

Presenters

John Martin	ACCC Commissioner
Arek Gulbenkoglul	Director, Water Branch, ACCC
Lisa Welsh	Strategic and Regulatory Manager, State Water
Jeff Parish	Chief Executive Officer, Central Irrigation Trust
Jenny McLeod	Executive Manager (Policy & Stakeholders), Murray Irrigation Limited

Disclaimer

This paper provides a summary of the discussion that occurred at the forum. It is not a verbatim transcript.

Introduction

John Martin provided opening remarks.

ACCC presentation

Arek Gulbenkoglul gave a presentation outlining the draft water infrastructure charge rules and draft advice. The slides from this presentation can be found on the ACCC website.

State Water presentation

Lisa Welsh gave a presentation outlining State Water's views on the draft water infrastructure charge rules and draft advice. In particular, Lisa focussed on identifying issues that State Water had concerns with and other potential shortcomings of the rules and advice.

Lisa noted that:

- The recommended approach should increase transparency and consistency across the Murray-Darling Basin (MBD).
- The ACCC's proposed approach for tier 3 appears very similar to that of the New South Wales Independent Pricing and Regulatory Tribunal (IPART). State Water is generally supportive of this approach.

- The main difference compared to IPART's approach is that the ACCC has recommended annual approvals or determinations to allow for changes in demand or consumption forecasts.
 - State Water is cautiously supportive of this approach for dealing with variable and unpredictable rainfall patterns.
 - In adopting such an approach she recommended that the ACCC should also aim to minimise price shocks between years.
- Templates and guidelines will be important tools for tier 3 operators.
 - State Water is looking forward to being involved in the development of these.
 - State Water notes that the guidelines should allow for flexibility rather than being overly prescriptive.
- State Water supports the inclusion of a variation provision but thinks that the criteria for variation should be more flexible (for example, it should also provide for unforeseen operating expenditure).
- State Water would like one regulator to determine all of their charges.
 - Eighty-five per cent of State Water's operations are within the MDB. It is expected that the NSW Government will opt-in to whole-of-state coverage.
- The draft rules do not provide for accreditation, State Water was expecting that the rules would allow for this.
- As the ACCC is likely to adopt a post-tax weighted average cost of capital (WACC) and State Water is currently operating under a pre-tax WACC, State Water would like to see their Regulatory Asset Base adjusted to account for this change in approach.
- State Water is concerned that if a certain amount of time elapses and the ACCC has not made a decision or extended the decision timeframe, State Water will not be able to levy any charges.
 - State Water recognises that the purpose of this is to provide an incentive for the business to provide sufficient information but thinks this is overly punitive.
- State Water is concerned that there are serious coverage limitations of the Water Act. State Water believes that this will limit the ability of the rules to contribute to achieving the Basin water charging objectives and principles.
 - In particular, the rules do not apply to any business that does not levy a charge (for example, River Murray Water). State Water suggested that this limitation be made very clear to the Minister.

Lisa Welsh's slides can be found on the ACCC website.

Cental Irrigation Trust (CIT) presentation

Jeff Parish provided an overview of the current environment of irrigation in South Australia to put the water infrastructure charge rules into context. Jeff noted:

- CIT provides services for 10 irrigation districts in South Australia. It is expected that another three or four districts may join in the next 18 months.
- CIT's infrastructure network is predominantly automated and most of the water distributed by CIT is used in horticulture.
- The drought has meant that allocations have been low for a number of years.
- At the same time commodity prices are falling, especially for those in the wine industry (though the citrus industry is doing better).
- Many irrigators supplied by CIT are choosing to exit the industry. The main purchasers of entitlements are the South Australian and Australian Governments.
- CIT originally supported the 4 per cent trade limit but given pressure from irrigators trying to get out, it has recently increased the cap to 6 per cent. It then allow for two years to be brought together to allow for 12 per cent to be traded out in the current year. Mortgagees and those leaving on an exit grant are not included in this threshold.
- CIT does not support transformation.
- CIT is proceeding with unbundling land, water entitlements and water use licences.
- CIT is moving towards a higher proportion of costs being recovered though fixed charges; they will transition this over five years.
- The water infrastructure charge rules are of little importance to CIT given all the other issues being faced by the operator and the industry more generally.
 - CIT already do most of the things that will be required under the rules.
 - CIT cannot currently make a distribution so that part of the rules does not currently apply.
 - The requirement to have an independent engineers report will impose extra cost on the operator and its customers and is not supported by CIT. CIT think that the ACCC should pay for this requirement.
 - The timing of the commencement of the rules and the transitional arrangements are very important. CIT requires charges to be set by late August and the rules should provide for this.

Murray Irrigation Limited (MIL) presentation

Jenny McLeod presented some background information on MIL and the irrigation sector and MIL's views on the draft rules and draft advice.

In relation to MIL's operations, Jenny noted:

- The move to member ownership in New South Wales was driven by irrigators. While MIL is a corporation it operates more like a cooperative.
- MIL had its constitution changed so that irrigators did not have to own land in MIL's area of operations in order to be members.
- MIL is currently trying to change their constitution so that customers do not have to hold MIL water in order to receive water delivery services. MIL needs a 75 per cent majority vote to get this passed.
- MIL is already subject to a host of New South Wales regulation—from the Environmental Protection Agency and under its works licence, operating licence and water access licence.
- MIL is a gravity fed district just north of Goulburn-Murray Water. They supply mostly to annual cropping and have carryover.
- In the last few years MIL has received very low allocations—down to 0 per cent in 2006-07 and 2007-08.
- Sixty per cent of MIL's fixed costs are recovered through fixed charges in years of average rainfall (less is recovered in years of below average rainfall).

In relation to the draft rules and advice, Jenny noted:

- The Murray-Darling Basin Authority (MDBA) and River Murray Water are not covered by the Water Act and this is a major limitation of the Act.
 - A large component of MIL's bulk water costs are from MDBA charges. These costs form a large part of the charge levied on MIL's customers.
- Operators have not had enough time to react to all the various streams of work coming out of the ACCC.
 - MIL noted that in advising the Minister, the ACCC should note that MIL is dealing with constitutional changes and therefore needs more time to adjust.
- In relation to the publishing requirements, MIL is of the view that publishing on their internet site should be sufficient and the requirement to publish in a paper or the Government Gazette is unnecessary.
- MIL would prefer a requirement to provide a schedule of charges and fees by 1 July of the relevant year rather than one month before changes take effect.

- In relation to the tier 2 rules, MIL does not think that these should be mandated as they will impose further costs on these businesses. MIL also thinks that their customers do not want these measures.
 - MIL is of the view that the publishing requirements should apply to all operators and the tier 2 rules should not apply to any operators.
- The requirement to have an independent engineers report is not supported by MIL.
- In relation to the tier 3 rules, MIL noted that it is similar to the process of IPART but noted that:
 - the external review should be optional
 - a public forum should be mandatory
 - there should be adequate time for consultation after the draft decision
 - the annual review could be problematic.
- MIL noted that it cannot currently pay a distribution and hence, this part of the rules does not currently apply to them. MIL was of the view that the concern about distributions would be better addressed through the non-discriminatory charging rules than through an approval or determination process.

Jenny McLeod's slides can be found on the ACCC website.

Questions and answers

Water distributions and non-discrimination

George Warne (Chief Executive Officer, State Water) noted that from time to time operators make upgrades to their networks to reduce the amount of water being lost through seepage and evaporation. Some operators distribute these 'water savings' back to their members in proportion to their members' irrigation rights.

George noted that given the value of water on the market, these distributions could be seen as another way in which member-owned operators could discriminate against non-member customers. Hence, he asked whether the water charge rules could address this issue under the proposed dividend-triggered approval or determination process.

Arek Gulbenkoglou (ACCC) noted that the rules were only able to relate to regulated water charges and it is likely that this issue would be outside the scope of the rules.

Matt Simpson (ACCC) noted that the water market rules addressed the issue of conveyance losses upon transformation. He noted that this issue is probably best addressed through contracts under the water market rules.

Jenny McLeod (MIL) noted that there was also a practical consideration involved in distributing any water savings. In particular, there needs to be some basis on which the savings should be distributed and it is difficult to see what basis this would be if not membership.

Cost recovery from transformed customers

Jenny McLeod (MIL) asked how government charges could be recovered from transformed customers.

Sebastian Roberts (General Manager, Water Branch, ACCC) responded that such fees should be passed through to transformed customers in the same way that they are passed through to member customers.

Ability to pay

George Warne (State Water) noted that IPART currently has to consider customers' ability to pay in determining State Water's charges. IPART also aims to minimise price shocks through transitioning changes over time. George asked whether the ACCC would be considering ability to pay and management of price shocks through its approval or determination process.

Arek Gulbenkoglou (ACCC) noted that, while the ACCC does not have an explicit requirement to consider these factors, these are common considerations for regulators. In particular, the ACCC would aim to minimise price shocks.

Arek also noted that the ACCC will only be approving or determining maximum prices. Hence, operators will be able to levy lower charges if they wish to manage such issues more conservatively.

Transformation

Marty Salmon (Murrumbidgee Irrigation) raised the issue of transformation noting that he did not really see the benefits of transformation.

Jeff Parish (CIT) noted that he too did not understand why irrigators would wish to transform their entitlement and retain delivery with the operator.

Jenny McLeod (MIL) noted that the Australian Bankers' Association appeared to be encouraging irrigators to transform their entitlement as a way of increasing their security. She noted, however, that none of the banks that actually operate in irrigation areas have any issues with irrigators using their irrigation rights as security.

George Warne (State Water) noted that he had heard that Trangie Nevertire Irrigation Scheme was considering moving towards 100 per cent transformation. He noted that such a situation would cause practical difficulties for State Water. Instead of managing the group water access licence with the operator, State Water would instead be required to manage dozens of water access licences with individual irrigators.

John Martin (ACCC) noted that these issues, while important, are peripheral to the development of the water infrastructure charge rules.