



Western Australia

Economic Regulation Authority

Final Decision on the application by the Water Corporation to align its metropolitan operating area boundary for drinking water and sewerage services with that of the WA Planning Commission's Metropolitan Region Scheme boundary.

ECONOMIC REGULATION AUTHORITY

June 2005

FINAL DECISION

1. On 29 June 2004, the Water Corporation (**the Applicant**) applied to the Economic Regulation Authority (**Authority**) to amend its water services operating licence (**the Application**).
2. The Application sought to align the Applicant's metropolitan operating area boundary for drinking water and sewerage services with that of the Western Australian Planning Commission's Metropolitan Region Scheme boundary. The effect of this change would be to almost double the area presently licensed to the Applicant within the Metropolitan area (although a significant part of this expansion is State forest).
3. Following discussion with the Authority, the Applicant provided further information in support of its Application on 8 December 2004.
4. The Authority consulted upon the Application in accordance with Section 31 of the Water Services Licensing Act (the Act).
5. The Authority provided the Applicant with 28 days written notice of the amendments under consideration pursuant to section 31(2) of the Act and clause 5.2 of the Applicant's licence.
6. The Applicant made a submission to the Authority on 23 May 2005 concerning the amendments under consideration.
7. Pursuant to Section 31 of the Act, the Authority has decided to:
 - approve the Application to extend the Applicant's metropolitan operating area boundary for drinking water and sewerage services to align it with the Western Australian Planning Commission's Metropolitan Region Scheme boundary;and
 - amend the Applicant's metropolitan operating area for drinking water and sewerage services to a non-exclusive basis,

STATEMENT OF REASONS

8. Section 31 of the Act states that:
 - (1) *The Authority may determine that a licence is to be amended.*
 - (1a) *The Authority is not to make a determination under subsection (1) unless the Authority is satisfied that it would not be contrary to the public interest to do so.*
 - (2) *If the licence specifies a procedure to be followed in making such a determination, the determination may only be made in accordance with that procedure.*
9. Pursuant to section 31A and 19(1b) of the Act, where the Authority is required to determine whether something would not be contrary to the public interest, the Authority may take into account one or more of the following matters:
 - environmental considerations;
 - social welfare and equity considerations, including community service obligations;

- economic and regional development, including employment and investment growth;
 - the interests of water services customers generally or of a class of water services customers;
 - the interests of any licensee, or applicant for a licence, in respect of the controlled area or part of a controlled area to which the order, if made, would apply;
 - the importance of competition in water services industry markets;
 - public health considerations in relation to the provision of a safe drinking water supply;
 - the policy objectives of government in relation to water services;
 - any other matter that the Authority considers relevant.
10. Clause 5.2 of the Applicant's licence states that the Authority shall:
- provide a minimum of 28 days written notice to the Applicant of the amendments under consideration by the Authority;
 - receive, within that 28 day period, or such longer period as the Authority deems appropriate, the relevant comments and/or submissions made by the Applicant; and
 - take into consideration those comments and/or submissions,
- before making a final determination in relation to the licence.
11. On 5 May 2005, the Authority notified the Applicant of the amendments to the Applicant's licence that the Authority was considering and the reasons for the proposed amendments. Pursuant to section 31(2) of the Act and clause 5.2 of the Applicant's licence, the Authority provided the Applicant with 28 days to provide comment on those proposed amendments. The Authority received a submission from the Applicant on 23 May 2005.
12. The following process was implemented to determine whether it would be contrary to the Public Interest to grant the Application.
- An Issues Paper was formulated and posted on the Authority's website, and the public invited to make submissions on the matters raised.
 - Submissions were sought directly (either by email or post) from five government policy departments, nine adjacent local government areas, seven private and NGOs, four other potable water suppliers, and 17 other water licensees.
 - An advertisement was placed in 'The West Australian' seeking submissions from any interested party.
 - A total of eleven submissions were received.
13. The Authority considered the application, all submissions received, the requirements of section 31(1a) of the Act, and issued a final decision based on the following factors.
14. The Authority accepted the arguments put forward by the Applicant for an amendment to Schedule 1 of the Operating Licence issued to the Applicant for the Metropolitan Operating Area (Potable Water Supply Services) and the Metropolitan Operating Area (Sewerage Services) to amend the Operating Area

boundaries so as to align them to the Western Australian Planning Commission's Metropolitan Region Scheme. In particular, the Authority accepted that there are benefits to the public in having a service provider responsible for long term planning of potable water supply services and sewerage services in the metropolitan area.

15. Accordingly, the Authority decided to approve the Application to extend the Applicant's metropolitan operating area boundary for drinking water and sewerage services to align it with the Western Australian Planning Commission's Metropolitan Region Scheme Boundary.
16. However, the Authority was mindful of "the importance of competition in water services industry markets". The Authority was also conscious of submissions from a number of organisations who, while supporting the Application, did not support it on the basis that it be granted on a 'sole-provider' basis as there may be opportunities for competition in the provision of water and wastewater services in the metropolitan area in the future.
17. The Authority was also aware that a sole provider licence is something of a misnomer as the operating area of a licence may be amended pursuant to section 31 of the Act, and mechanisms, such as Part IIIA of the *Trade Practices Act 1974* (Cth), exist for parties to have access to those operating areas.
18. The Authority considered whether it should just make the extension to the operating area "non-exclusive" instead of the entire operating area. However, in light of the above, and that having an "exclusive" area and a "non-exclusive" area in the Applicant's metropolitan operating area could lead to confusion, the Authority decided to amend the entire metropolitan operating area for drinking water and sewerage services to a non-exclusive basis.
19. The Authority also considered whether other operating licences with "sole-provider" operating areas (whether belonging to the Applicant or to other licensees) should be amended to a non-exclusive basis and decided that it was not necessary to implement this change at this stage as the Authority was only considering this one specific application. However, any applications for an amendment submitted in the future would be considered on the same basis as the Application.
20. The Applicant sought an amendment to its Operating Licence that the Authority notify the Applicant within 7 days of all requests submitted by alternate service providers for excisions within the Applicant's sole provider operating areas or requests to service within the applicant's non-exclusive operating areas. In the Authority's view, such an amendment would be contrary to the public interest as it would be unfair to other water service providers and be detrimental to competition in the water services industry. Therefore, to ensure fairness and consistency, the Authority has decided to publish any proposed amendments to a water service provider's Operating Licence on the Authority's website prior to making a final determination on the proposed amendment.
21. In accordance with section 31(4) of the Act, the Authority will ensure that notice of the amendment is published in the *Government Gazette*.