

Decision on Amendment to Water Corporation Operating Licence 32

24 January 2011

Economic Regulation Authority



WESTERN AUSTRALIA

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DECISION

1. The application for this licence amendment was made pursuant to section 31 of the *Water Services Licensing Act 1995 (Act)*.
2. The Economic Regulation Authority (**Authority**) has approved an amendment to Operating Licence 32 (Water Corporation) under section 31 of the Act. The amendment expands the Water Corporation's operating area for its potable and non-potable water supply and sewerage services to match the State's controlled area boundaries for potable, non-potable and sewerage services.
3. As required under section 31(4)(b) of the Act, the Authority will publish a notice of its approval of the licence amendment in the *Government Gazette* as soon as is practicable.

REASONS

4. On 11 May 2010, the Water Corporation (**Corporation**) submitted an application to the Authority seeking an amendment to its operating licence to expand its operating area for its potable and non-potable water supply and sewerage services to match the State's controlled area boundaries for its potable and non-potable water supply and sewerage services. This request is the result of one of the key recommendations in the Corporation's 2009 Operational Audit Report.
5. A notice inviting public submissions was published by the Authority on 20 May 2010. The period for submissions closed on 10 June 2010 and three submissions were received from Aqwest - Bunbury Water Board (**Aqwest**), Busselton Water and the Department of Water (**DoW**). Copies of submissions can be viewed on the Authority's website.
6. Aqwest and Busselton Water did not oppose the Corporation's application. However, the DoW raised concerns stating that:
 - The amendment application did not address the financial and technical capacity of the Corporation to provide services within the proposed expanded operating area.
 - The current government policy on licence operating areas was that an operating area should equate to the area of service (with a margin for growth).
 - The expansion of the operating area may provide a competitive advantage over other suppliers by creating a perception that the Corporation is the "preferred" supplier for that area.
7. Given the nature of the issues raised in the first round of consultation, a second notice was published on 27 July 2010. This notice outlined issues raised in the first round of consultation and invited further comments by 16 August 2010. The Authority received a request to extend the due date for submissions for this second round of consultation and submissions closed on 30 August 2010. Two

- submissions were received from the Water Corporation and the DoW and these can also be viewed on the Authority's website.
8. The Authority deferred the application, to allow the Secretariat time to clarify the DoW's position on exclusivity of operating areas and existing and future government policy on operating areas.
 9. Following discussions with the DoW, the Authority was satisfied that operating areas are not exclusive and the Corporation's application is not contrary to government policy.
 10. On 2 November 2010, the Corporation wrote to the Authority and requested that the Authority reconsider the Corporation's amendment application.
 11. The Authority notified all interested parties registered to receive notices lodged on the Authority's website of the application by the Water Corporation to extend their operating area for their potable and non-potable water supply and sewerage services to match the State's controlled areas.
 12. In relation to the issues raised in the submissions received, the Authority notes that:
 - Section 23 of the Act states that financial and technical assessments are only required when a new licence application is assessed. Therefore, no financial and technical assessment is required in relation to this amendment.
 - The Authority is not convinced that the expansion of the operating area will designate, in perception or reality, the Corporation as the "preferred" supplier for the operating area. Further, as the Authority considers all operating areas are non-exclusive, this extension does not prevent other entrants from providing services to this operating area.
 - The "policy objectives of government in relation to water services" is a matter which the Authority may take into account in considering whether the application would not be contrary to the public interest. The Authority has considered the policy objectives of the government and is satisfied that the grant of the application would not be contrary to government policy objectives.
 13. In its assessment of the application, the Authority considered the public interest, including the matters set out in section 19(1b) as required by section 31A of the Act. Accordingly, the Authority concluded that the approval of the amendment to Operating Licence 32 would not be contrary to the public interest.

LYNDON ROWE
CHAIRMAN