

Australian Capital Territory

Independent Competition and Regulatory Commission (Regulated Water and Sewerage Services) Terms of Reference Determination 2007*

Disallowable instrument DI2007-65

made under the

Independent Competition and Regulatory Commission Act 1997 (“the Act”),
Section 15 (Nature of industry references) and Section 16 (Terms of industry references)

Reference for Investigation Under Section 15.

Pursuant to subsection 15(1) of the Act, I refer to the Independent Competition and Regulatory Commission (the “Commission”) the matter of an investigation into, and the making of a price direction for, regulated water and sewerage services provided by ACTEW Corporation Limited (“ACTEW”).

Specified Requirements in Relation to Investigation Under Section 16.

Pursuant to subsection 16(1) of the Act, I specify the following requirements in relation to the conduct of the investigation:

1. The Territory intends to continue to impose a charge on ACTEW (currently the Water Abstraction Charge) to recover from ACTEW (and all other water takers) the costs associated with the taking of water and to reflect the value of water as a scarce resource.
2. The Territory may set the charge referred to in paragraph 1 for the period 2008-09 to 2013-14 at a level or levels designed to:
 - a. support the policies of the ACT Government, particularly as set out in the document entitled *Think Water, Act Water - Strategy for Sustainable Water Resource Management in the ACT*, and its target of a “reduction in per capita consumption of mains water by 12 per cent by 2013 and 25 per cent by 2023”; and
 - b. support such further reductions in water consumption as may be considered necessary or appropriate from time to time having regard to the impact of drought or other factors affecting the availability of water for supply in the Territory.

*Name amended under Legislation Act, s 60

The setting of this charge will be in conjunction with other existing and possible future demand management policies of a non-price nature.

3. In making the price direction, the Commission is required to have regard to the charge referred to in paragraph 1 (as well as the possibility that the Territory will change the level of the charge), the ACT Government policies referred to in Paragraphs 2a and 2b, as well as ecologically sustainable development and National Water Initiative policies agreed to by the ACT Government.
4. In arriving at its decision on the price direction, the Commission should examine all regulatory models available to it under subsection 20A(1) of the Act, and report on the various costs and benefits to ACTEW, the Territory and the community under each approach.
5. In arriving at its decisions in relation to the price direction, the Commission should have regard to:
 - a. ACTEW's need to invest and sustainably maintain and manage its assets to maximise the security of the Territory's water supply, particularly having regard to the current severe drought and the longer term impact of the damage to water catchments arising from the 2003 bushfires;
 - b. the commercial value of past investment by ACTEW or its predecessor bodies in infrastructure that continues to deliver services and is needed to sustain a high standard of service to all residents of the Territory, giving particular consideration to an optimised depreciated replacement cost valuation as applies in relation to other utilities;
 - c. an assessment of the commercial value of ACTEW's regulatory asset base that gives particular consideration to all investment in the water network (including water and sewerage assets purchased or transferred from the Commonwealth in 1988 at the time of the creation of the ACT Electricity and Water Authority or otherwise gifted to it) and appropriately reflects the re-instatement of assets returned to service as the result of changes to operating procedures during the current period;
 - d. an appropriate allowance for a cost of capital that ensures optimal incentives to invest and to manage the potential risks and costs to the community of under-funding, and under-investment in, infrastructure services;
 - e. ACTEW's objectives under the *Territory-owned Corporations Act 1990* "to operate at least as efficiently as any comparable business", "to maximise the sustainable return to the Territory on its investment in the corporation ...", "to show a sense of social responsibility by having regard to the interests of the community in which it operates, and by trying to accommodate or encourage those interests" and "to operate in accordance with the object of ecologically sustainable development";

- f. incentives for ACTEW to undertake commercial investment in research and development in water and sewerage services in the Territory; and
 - g. achieved efficiencies in service delivery and appropriate incentives to both ACTEW and the operator, currently ActewAGL, to ensure ongoing efficiencies.
6. In accordance with section 16(2)(a) of the Act, the Commission is to provide its final report by 1st March 2008.

Simon Corbell MLA
Attorney-General
28 February 2007