



**Nekon Pty. Ltd.** ABN 64 676 235 168

GPO Box 1406  
Hobart TAS 7001  
Australia  
T: (03) 6224 6511  
F: (03) 6224 6522  
E: [info@nekon.com.au](mailto:info@nekon.com.au)

26 February 2015

**Attention: Mr Glenn Bounds**  
Assistant Director – Price and Service  
Office of the Tasmanian Economic Regulator  
GPO Box 770  
HOBART TAS 7001  
*Via Email: [office@economicregulator.tas.gov.au](mailto:office@economicregulator.tas.gov.au)*

Dear Mr Bounds,

**2015 Price Determination Investigation  
Regulated Water and Sewerage Services in Tasmania**

We appreciate the opportunity to respond to the draft Price Determination as above.

The first observations from reading the report are that TasWater does not appear to be taking the Price Determination seriously. There are a number of references throughout the Draft Determination where TasWater is cited as not providing information or justifications for its conclusions or commitments. This is indeed very concerning, but rather than take issue with each indiscretion, we instead focus our submission on three very serious **matters** as outlined below.

**5.7.1 Outcomes of TasWater's Price Transition Arrangements**

We would submit to the Regulator that from TasWater decisions that there has been a serious disregard for the obligations of TasWater in determining its dividend policy and the failure of the Regulator to require compliance.

The report notes, among other things, that TasWater is required, in determining its dividend policy, to act consistently with good commercial practice, make adequate provision for expected future capital requirements and maintain operational expenditure capacity before payment of dividends to Council owners.

It is therefore disconcerting that TasWater has been allowed to divert around \$30 million per annum to Councils (half of which is dividends) when there is appalling environmental and public health non-compliance along with the infrastructure backlog.

What has got to happen to make TasWater and owner Councils take their responsibilities seriously? Does there need to be serious health outbreaks, does there need to be oysters consumed by interstate or overseas customers who are made violently ill and affect the reputation of the State before

TasWater and its shareholders take the matter seriously? Owner Councils must be made accountable for the proper funding of TasWater and it is not good enough for the Board of TasWater to be allowed to make determinations which merely appease owners instead of acting in the best interests of customers and meeting regulatory compliance requirements. The Regulator cannot be a party to this serious non-compliance by allowing dividends to be paid and capital calls not to be made on shareholders.

### **5.8.2 Pace of Transition for Customers Above Target Tariff**

We commend the objective of finally resolving the transitioning of all customers to target tariff ahead of prior previous projections, but we do hold concerns at how a regulated entity can be so off target with forecast revenues.

Above forecast revenues in the past pricing determinations of just on \$80 million are obviously welcome to TasWater and, if our presumptions are correct, have assisted TasWater make dividend payments to Councils. In two of the three financial years that forecasts has been exceeded by 10% and other year about half that amount.

This is a clear example of funds being unnecessarily diverted away from customers and infrastructure to Council owners. We submit that these excess revenues are the result of either very bad revenue forecasting (either deliberate or poor process on behalf of TasWater) and/or the Regulator failing in its oversight function. What processes does the Regulator have to claw back these excess revenues for the benefit of consumers?

A very important question must be asked whether TasWater deliberately deceived or was being excessively conservative in not providing accurate and adequate information to the Regulator? Alternatively, did the Regulator fail to meet its oversight obligations and responsibilities? What confidence do we have this does not happen again and how will TasWater be penalized if it does?

## **3 Regulatory Compliance**

References in the Executive Summary and Chapter 3 highlight the disregard TasWater, the Environment Protection Authority, Director of Public Health and the Economic Regulator have for bringing non-compliant potable water schemes and waste water treatment plants into compliance.

It is unacceptable for TasWater to have only 4% of water waste treatment plants comply with discharge standards. The directors of TasWater and the shareholders should be held to account.

The statements in the report, “that there is collaboration between the various entities”, signals there is a bureaucratic imperative in reaching understood acceptable non-compliance measurements to enable TasWater to abrogate accountability and responsibilities. This is an unacceptable practice and all parties should understand what their roles and responsibilities are. We would submit that the Auditor General should be asked to make a determination on these serious compliance issues and the “ripping out” of dividends by shareholders and whether this practice is acceptable by today’s standards.

We are very concerned that the Regulator appears to be a “rubber stamp” for various side agreements between TasWater, EPA and Director of Public Health. It is unacceptable to negotiate

Re: 2015 Price Determination Investigation – Regulated Water and Sewerage Services in Tasmania  
26 February 2015

---

away environment and public health compliance. Independence and integrity of regulatory entities must be paramount at all times.

The solution is not in compromising standards; instead, it is in requiring owners to accept their rightful responsibilities for properly financing TasWater.

Ownership of TasWater should not be simply a vehicle to extract money from customers. Ownership brings much wider responsibilities such as ensuring TasWater is meeting environment and public health requirements and to properly fund its business to enable TasWater to meet those obligations.

It is apparent from TasWater submissions that it is predisposed to higher customer tariffs, delaying transition to target tariffs, maintain processes that enable it to raise revenues above forecast and maximize dividends to Councils. We commend the Regulator for concluding that TasWater tariff increases be reduced and redirecting excess revenue to expedite transitioning to target tariff. TasWater should feel ashamed that it has not been proactive in constructively addressing these matters and it is only the Regulator who has enforced this compliance.

Our comments in this submission highlight our concerns about specific points of principle. There are many aspects of the draft Price Determination that we support and we compliment the Regulator for being more challenging in its considerations of the TasWater submissions. We encourage the Regulator to exercise its independence without fear or favour of TasWater or its owners and ensure other regulatory entities invoke their statutory obligations and responsibilities. We would strongly urge no dividends are allowed and that the matter of regulatory capture is forwarded to the Auditor General for scrutiny.

**Yours faithfully**  
**NEKON PTY LTD**

**Per:** 

**ROBERT ROCKEFELLER**

(Direct email: [robert@nekon.com.au](mailto:robert@nekon.com.au))  
(Direct phone: (03) 6224 6511 )

cc: The Hon Peter Gutwein, Treasurer, Minister for Planning and Local Government