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Office of Utilities Regulation

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# National Irrigation Commission

## Application for Reconsideration of Irrigation Rates for Beacon/Little Park, St. Elizabeth

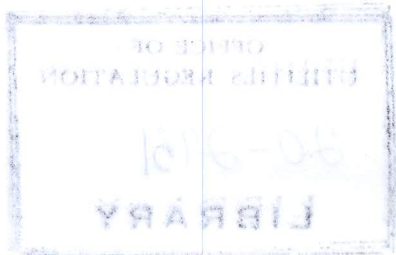
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### Final Decision

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OFFICE OF UTILITIES REGULATION



December 21, 2007

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# Chapter 1: Background

## 1.0 Introduction

The National Irrigation Commission (NIC) applied to the Office for irrigation rates for the Beacon/Little Park service area on April 3<sup>rd</sup> 2007. After public consultation and internal review, the Office issued a determination notice, Document No. WAT 2007/02 on September 10<sup>th</sup> 2007 setting out its Decisions on demand and service charges as well as quality of service standards for service delivery. The rates became effective October 1<sup>st</sup> 2007.

1.1 Pursuant to the draft Office Procedural Rules, rate applicants can apply for reconsideration of the Office's decision if in their view, the Office has erred in fact or in law, or if there are significant changes in circumstances that could not have been reasonable foreseen by the Office/applicant at the time of making the decision. Applicants can also apply for a stay of the Office's determination until a decision is made on the reconsideration application. Notwithstanding this, the Office, of its own volition, can stay its decision until a final decision has been on the application for reconsideration.

1.2 NIC submitted an application for reconsideration on the Office's determination notice, Document No. WAT 2007/02, on September 21<sup>st</sup> 2007. These rates became effective October 1<sup>st</sup> 2007. The NIC did not apply for a stay of the Office's decision, and the Office was of the view that since the project is already commissioned, the NIC can commence the provision of service to the farmers at the specified rates. Consequently, the Office's determination is in effect as of the effective date of the decision.

## 1.3 NIC's reasons for reconsideration application

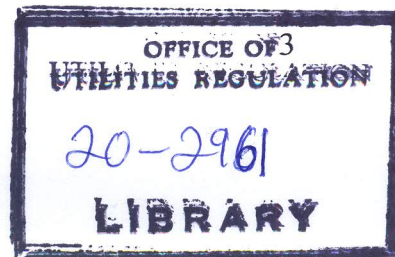
The following summarizes NIC's reasons for requesting a reconsideration of the Office's Determination:

### 1. Repairs and Maintenance

NIC states that the Office calculated the repairs and maintenance (R&M) provision on an underestimated total direct cost maintaining that the total direct cost should be \$31.263M. NIC calculates the R&M provision at \$1.406 million (4½% of \$31.263 million) instead of \$1.209M as determined by the Office.

### 2. Electricity expense

In relation to the electricity provision, the NIC states that the unit cost of \$2.80/m<sup>3</sup> used by the Office is far too low resulting in a less than reasonable overall rate for Beacon/Little Park. NIC argues that the delivery capacity of the wells in the Beacon and Little Park area will result in increased hours from the pumping of water when compared to Hounslow. NIC also states that





*“...Data from the Commission indicates that the current unit cost of pumping water at Hounslow during the 2006 – 2007 financial year was \$5.36/ m.<sup>3</sup>*

*This is substantially above the \$2.80m<sup>3</sup> the Office has used in its computation of energy costs. The sharp increase in unit costs between 2004 and 2007 (from \$2.80 to \$5.36) reflects directly the change in JPS tariff structure, the price of oil and subsequent increases in electricity costs.*

*Given the continued decline of the value of the local currency as well as the increase in fuel prices, a unit cost of \$5.60/ m<sup>3</sup> of water pumped may be more realistic....”*

3. Administrative, billing and accounting expense

NIC represents that the Office’s provision for the total cost for administrative, billing and accounting expense of \$3.6 million is incorrect. According to NIC, the total cost for this expense is \$7.56 million, to service a customer base of 927. This was prorated \$3.6M, \$3.6M and \$0.36M to Beacon/Little Park, Hounslow and Sevens River respectively.

4. Guaranteed Standards

In relation to the Guaranteed Standards, NIC states that the reconnection time of 48 hours is too short. The company argues that 72 hours is more appropriate as

*“.....irrigation installations involve larger pipes and fittings compared to domestic ones and are done in agricultural fields with operators traveling off the roads. This could affect access under conditions of persistent rainfall for example. Some reconnections may also involve excavation of valves and pipelines along with fabrication of components. This is not generally possible in 2 days especially when the works include installation and testing. With the best of intentions, a two-day guarantee is not sufficient. The JPSCO for example gives its customer 72 hours for this type of activity”.*

5. NIC is also of the view that for reasons cited in 4 above, 24 hours to reconnect service for wrongful disconnection is more reasonable than the Office’s 12 hours.

6. NIC wants the obligation of trucking irrigation water to its customers in the event of service disruption be removed. It does not consider this delivery its responsibility and argues that this function resides with the Rapid Response Unit (RRU). NIC further states that the trucking of water for agriculture is not feasible or practical because of the large volume of water required. Also, farmers’ crops can generally withstand loss of irrigation water for periods far longer than 24 hours. The company cites that the current contractual arrangement with its

customers does not allow it to be liable for acts of God or any contingency affecting supply works.

#### **1.4 Procedure for Reconsideration**

The Office's Draft Rules of Practice and Procedures (which are currently the subject of public consultation), provide that tariff applicants may request a reconsideration of an Office decision if they are of the view that the Office:

- Erred in fact or in law or
- If new facts or changed circumstances have occurred that the Office (or the applicant), with ordinary diligence, could not have known while the application was being reviewed.

1.5 The Draft Rules of Practice and Procedures (the Rule of Practice and Procedures) allow an applicant fourteen (14) days after the issuance of the Office's decision to submit a reconsideration application. It also provides that within five (5) working days of receiving an application for reconsideration, the Office will duly notify the public, by way of notice in the print media and on its website of this application.

1.6 With the exception of the applicant, it is proposed that respondents will have 5 working days within the issuance of the public notice to submit comments. The applicant, however, will be given 14 working days to provide additional information to substantiate its reconsideration application. After the 14 working days have expired, the Office will make a decision on the application within 30 working days. The decision at the end of the 30 working days will serve to rescind, modify or confirm the original determination and the Office will outline the reasons for its final position.

#### **1.7 Public Consultation**

As a matter of policy, the Office consults with the public on all rate-related issues. The OUR issued a public notice in the print media on October 14<sup>th</sup> 2007 to inform the stakeholders of NIC's application for reconsideration. Information related to the reconsideration application, as well as a summary of the Office's decision (contained in Document No. WAT 2007/02) were distributed to the Water Users Group (WUG) in Pedro Plains, St. Elizabeth on October 12<sup>th</sup> 2007. Although the public notification period of 5 days was not met, the Office ensured that all interested parties were given sufficient time to submit responses to NIC's application for reconsideration.

1.8 Respondents, including the WUG, had until October 19<sup>th</sup> 2007 to submit comments on NIC's reconsideration application. NIC was also asked to substantiate its claim that \$7.56M and not \$3.6M was the cost originally provided



in billing, administrative and accounting expense. This information was to be submitted to the Office by October 25<sup>th</sup> 2007.

- 1.9 The Office did not receive any responses from the WUG. NIC submitted the additional information on October 26<sup>th</sup> 2007. The company stated that internal miscommunication resulted in it not submitting the information within the specified time. Given the explained circumstances, the Office accepted the late submission.

## Chapter 2: Office's Decision

### 2.0 Introduction

The Office has noted that although it provided guidance to the NIC on the basis on which it can apply for reconsideration, most of the reasons NIC have submitted as grounds for reconsideration do not fulfill the Office's criteria. Nevertheless, the Office has decided that in the interest of transparency, it will provide further clarity on issues that NIC has included in its submission. It cautions however, that this approach should not be viewed as normal Office practice but that cognizance must be given to the fact that the Procedures are being applied for the first time and therefore it is not unreasonable to exercise some flexibility as the parties become acquainted with the process and the rigour that is expected of stakeholders in preparing material for the Office's consideration. In future reconsideration applications, the Office will assess the application solely on the basis of: errors of fact or law, or unforeseen circumstances that could not have been known or included at the time of the Office's review.

- 2.1 The Office also noted that NIC's proposed rates in its application for reconsideration are different from that proposed in its rate application of 3<sup>rd</sup> April 2007. Specifically, service charge of \$813.70 per hectare (\$824.41 per hectare in April) and a demand charge of \$8.21/m<sup>3</sup> (8.02/m<sup>3</sup> in April) were included. The Office is of the view that the submission of different rates constitutes a new application, which would require new set of consultation and Office determinations. Consequently, the Office has disregarded NIC's 'new' proposed rates.
- 2.2 As stated in Document No. WAT 2007/02, the Beacon/Little Park project is independent of the NIC's existing operations, and customers connected to that system are required to pay the full cost of service provision. The rates determined by the Office allow for full cost recovery and assumes a reasonable level of operational and administrative efficiency. These customers should not only expect but demand that with rates that cover the total cost of service, the level of service guaranteed exceeds those where the service is subsidized and/or provided below cost. In addition the approved rate structure recovers fixed charges through the service charge thus customers are required to pay a significant amount even if no water is supplied. In these circumstances, there should be some pressure on and incentive for NIC to provide a reasonable level of service. The quality of service standards that are developed addresses these concerns. The service delivery standards that apply to existing NIC customers, which are subsidized by the government, cannot therefore be acceptable in these projects.



### 2.3 **Repairs and Maintenance**

The NIC stated that correct provision for R&M is \$1.406M. This amount was derived from multiplying the total direct cost of \$31.263M by 4.5%. However, the NIC has erred in its calculation. The Office multiplied the 4.5% by the total operating costs<sup>1</sup> (direct plus fixed cost) to determine the provision for R&M. The provision of \$1.209M is then added to this total operating cost to determine the overall cost that should be recovered through the rates.

### 2.4 **Electricity Provision**

Given that this project is new, there is no actual data available on electricity expense. In its Determination (Document No. WAT 2007/02), the Office had developed an estimate, based on available historical data to project the cost of electricity expense. However, the increases in fuel prices, and with the expectation that this trend is likely to continue, diminishes the significance of past information as this may result in an under recovery of electricity expense. There is no current data available on the energy usage, but with NIC's cost per kilowatt hour for Hounslow at \$14.89, the total electricity expense for this district on average would be \$18M. Since Beacon/Little Park wells have greater depth than Hounslow's it would require greater energy consumption to pump the water to customers. If the Office were to increase this energy per cubic metre by the difference in well size, the electricity provision would be \$31M. NIC's provision of \$24.1M falls within this range. The Office has therefore revised its calculation and has allowed this provision.

### 2.5 **Administrative, billing and accounting expense**

This expense category includes provision for four (4) full time administrative staff<sup>2</sup> and expenses related to printing and distribution of bills. In the rate determination, the Office determined that the provision of \$3.6M for administrative, billing and accounting expenses should be apportioned across the three projects. The method of apportionment was 45:45:10 to Beacon/Little Park, Hounslow and Sevens River respectively. In the application for reconsideration, NIC stated that this expense was \$7.56M for the three project areas. The Office requested that NIC submit pro forma statements to substantiate this amount, as it was contrary to the original provision of \$3.6M. The NIC subsequently represented that the revised customer base (854) has resulted in a revision to \$5.29M for the three projects. Based on the evidence presented, the Office is satisfied with the revision, and has adjusted the total fixed costs to reflect this change.

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<sup>1</sup> This amount excludes R&M provision. If this amount was included it would result in a circular reference.

<sup>2</sup> This consists of a billing and customer service officer, a secretary, a district accountant and an office attendant.



2.5.1 In the Determination Notice (Document No. WAT 2007/02), the Office concluded that the total fixed cost is \$2.46M. However, after incorporating the adjustment to the administrative expenses, this cost item has increased by \$764,136. This translates to an increase in total fixed costs to \$3.224M. This revised fixed cost will be divided by the total hectares (467) to determine the revised service charge.

## **2.6 Guaranteed Standards**

2.6.1 The NIC has raised objections to the standard that addresses the time within which it should reconnect its customers. The Office specified a reconnection time of 48 hours but NIC has stated that 72 hours is more reasonable as *“irrigation installations involve larger pipes and fittings compared to domestic ones and are done in agricultural fields with operators traveling off the roads”*. The company further argued that there is significant amount of work to be carried out in order to effect a reconnection. This includes the excavation of valves and pipelines along with fabrication components.

2.6.2 The Office is of the view that it is in the company’s interest to reconnect disconnected customers in the shortest possible time, as it is in the business of providing water service. NIC’s position gives the impression that the provision of irrigation water to customers is a privilege, and as such the customers should wait until the company finds time to reconnect them. It is therefore imperative that NIC operates the project in a manner that preserves the long term viability and allow it to recover its full operational costs. This can only be achieved if best endeavours are employed to keep the customers on the network. Furthermore, since all customers will be metered, the Office is of the view that disconnection involves the locking off at the meter. The extensive works that NIC describes is only applicable whenever new customers are being connected to the system or permanently removed.

2.6.3 The Office is of the view that reconnection time of 48 hours is reasonable as the standard reconnection time for JPS and NWC is 24 hours and 48 hours in urban and rural areas respectively. Furthermore if NIC can request 24 hours to reconnect a customer who was wrongfully disconnected, the Office’s determined 48 hours to reconnect customers that were disconnected for arrears is more than sufficient as the reconnection process is the same in both cases.

2.6.4 NIC also recommended that 24 hours (instead of the Office’s 12 hours) is a more reasonable time within which to restore service to customers that were wrongfully disconnected. NIC submitted similar reasons as that in 2.6.1 above to support its recommendation. In incidences where wrongful disconnection has occurred, the company has made an error, as such, it should remedy its mistake in the shortest possible time. This reconnection would not require extensive works as described



by the NIC. Consequently, the Office believes that the 12 hour time period is reasonable.

- 2.6.5 NIC has expressed concern about the obligation to truck water to its customers in the event of service disruption. The Office is aware of the difficulty that the NIC may experience in meeting this standard, but at the same time, has an obligation to ensure that the service disruption to the customers is minimized. During the public consultation, farmers were most concerned about the continuity of service and since these customers are paying the full cost of the service they should receive acceptable quality of service. Continuity of service is a critical component of good service, especially given the nature of the customers business. The Office is duty bound, where necessary, to impose conditions on service providers that will improve service quality.
- 2.6.6 In this regard, the NIC must, within 60 days of the effective date of this determination, submit to the Office for approval, a disaster mitigation plan. This should include, *inter alia*, plans that will be implemented by NIC in the event of natural disaster, or any other event that would result in greater than 24 hour disruption in service. The Office has removed the Guaranteed Standard that addresses “reliability of supply - trucking of water” from the list of service standards.
- 2.6.7 NIC also expressed concerns about being liable for breach of the Guaranteed Standards, for the occurrence of events that are beyond its control. However, the Guaranteed Standards may be suspended in circumstances where compliance is beyond the reasonable control of NIC (hereinafter called force majeure conditions). In the event of any such conditions, NIC must notify the OUR within 24 hours indicating reasons for its application for suspension and its intended duration. Force majeure conditions include, strike, civil unrest and natural disasters. This stipulation has been added to the determination notice.
- 2.6.7 The NIC is required to submit its terms and conditions of service to the Office for approval within 30 days of this decision. This has also been included in the revised determination notice.

## **2.7 Office’s Determination**

For reasons outlined in paragraph 2.4 and 2.5, the Office hereby modifies its original decision contained in Document No. WAT 2007/02. A summary of the Office’s determinations are recited below:

### **2.7.1 Determination 1**

***The service charge has been revised from \$438.97 to \$575.33 per hectare.***

***This service charge is to be paid on a monthly basis and is independent of water consumed.***

**2.7.2 Determination 2**

***The volumetric rate has been revised from \$6.67 to \$8.16 per cubic metre.***

**2.7.3 Determination 3**

***These rates will become effective January 1<sup>st</sup> 2008 and will be in effect for a period of at least fifteen (15) months.***

- 2.8 The Office has decided to not specify the alternate means of service delivery in the event of disruption in regular water supply in the Guaranteed Standard. Consequently, the standard entitled “reliability of supply – trucking of water” has been changed to “reliability of supply”.
- 2.9 The modified version of the Office’s decision will be circulated with the reference being Document No. WAT 2007/02.1 Volume 2.