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Report 02.336

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Report to the Policy, Finance and Strategy Committee
from Ted Maguire, Council Secretary

Rating of Utilities' Distribution Networks

1. Purpose

To further consider the question of levying of WRC rates on Utilities' Distribution Networks.

2. Background

- (1) On 24 April Council's Policy, Finance and Strategy Committee received a report on the rateability of Utilities' Distribution Networks (Report 02.202 of 16 April 2002 copy attached as **Attachment 1**).
- (2) A number of Annual Plan submissions, particularly from local authorities and some utility companies, seek exemption for, or remission of WRC rates. These utility companies have taken up the same question with Territorial Authorities in this Region and elsewhere, through Annual Plan submission processes.
- (3) Exemptions of utility networks seem to have their origins in the times when such networks were owned by the Crown, which was exempt from rates.
- (4) It would appear that the utility companies essentially have three concerns in relation to rating of utility networks.
 - They consider that they do not receive commensurate benefits compared to the likely rates to be levied.
 - They consider that Councils such as WRC levying rates will somehow increase compliance costs.
 - They consider that Councils levying rates will cause utility companies to increase their charges to customers.

The current approach of the utility companies seems to regard rates as a payment for service and they argue against being rated on grounds of economic efficiency. This is at variance with the established legal position that rates are a **tax**. There is

little doubt that some utilities may well consider taking legal action to challenge their rating liability despite previous Court decisions.

In this connection it should be noted that previous Court decisions make it clear that Distribution Networks are not to be treated as plant and machinery which is not rateable.

Accordingly, it can be argued that not rating Utilities' Networks means that the full costs of production are not being met and there is a cross subsidy from other ratepayers in favour of the Networks' owners and consumers.

Many other business ratepayers could make an equally compelling case for remission of rates because they would argue their properties receive little direct benefit from some local body services but they are required to and expected to pay rates for these.

The argument that compliance costs will be increased is not compelling and is not a reason in itself to consider not rating utility networks.

In terms of the likely increases in utility company charges this is not a matter for the Council to become involved in. Clearly the basis of charging by these companies needs to have regard for setting charges at a level sufficient to provide shareholders with a fair return.

- (5) Anecdotal evidence suggests there is now some support from territorial authorities in this Region for remitting rates on local government networks as an interim measure, but not those outside the local government sector. I firmly believe that any agreement to remit rates on local authority owned networks, but not for other networks, would likely expose the local government sector to considerable criticism and increase the possibility of legal action being taken against the sector.
- (6) The more limited rating powers of regional councils constrain what action we can take.

A legal opinion on the rating powers of this Council in relation to networks is attached (**Attachment 2**). This concludes (in para 10 on page 8):

- “10.1 Until 1 July 2004, WRC has no power to remit rates for utility services other than those where a local authority of LATE is the ratepayer. WRC may but is not obliged to remit rates for utilities' services networks where a local authority or LATE is the ratepayer.*
- 10.2 Until 1 July 2003, WRC has no power to make a differential rate (including a zero rate) for its general rate.*
- 10.3 WRC has the power to make a differential rate for any special rate and, after 1 July 2003, for the general rate provided it does so by reference to the statutory criteria applicable – s.81(2) of the RPA or Schedule 2 of the LGRA as the case may be – and any decision to make a rate on a differential basis is otherwise defensible.*
- 10.4 A decision which would result in no rates being paid by utilities' services networks (whether by reason of a rates remission policy or by a zero rate under a differential rate) is almost certainly indefensible.”*

It should be noted that we have no discretion with the general rate for 2002/03 for the private sector networks.

- (7) Liabilities of utility networks for rates was reviewed by Parliament's Local Government Environment Select Committee earlier this year when considering the Local Government (Rating) Bill – now an Act. Utility companies sought exemption for Networks but this was not agreed to (although I understand opposition members of the Select Committee dissented.) I understand the arguments put forward were very much the same as had been advanced in Annual Plan submissions and focussed primarily on “economic efficiency”.
- (8) WRC bulk water facilities, but not the pipelines, are currently subject to rates of the four City Councils and ourselves. This is in keeping with s.114 of the Wellington Regional Water Board Act which states:
- “All rateable property of the Board, within the meaning of the term “rateable property in the Rating Act” and owned or used by the Board for the purpose for which it is constituted shall be liable to be rated by a Local Authority having jurisdiction in that respect”.*
- (9) As indicated in my earlier report, (report 02.202) Upper Hutt City Council has proposed to change its rating system from land value to a capital value. That will significantly impact on this Council particularly in the area of Bulk Water. While some may consider this is an unrelated question, it could be argued that the ability to significantly increase rates payable by the WRC would make the change to capital value rating more palatable to other ratepayers who may be adversely affected by such a change. (Any such change has adverse effects for some and there are of course those other ratepayers who will pay less rates.)
- (10) Concerning other Regional Councils, it is my understanding that most Regional Councils using a capital value rating system, are proposing that Utilities' Networks be treated in the same way as for other business ratepayers.
- (11) A meeting of Chief Executives about the approach for rating Utilities is being convened by Mr Garry Poole of Wellington City Council on Friday, 14 June. Mr Stone and I will be attending. This is of course after the Policy, Finance and Strategy Committee meeting.
- (12) As mentioned above, it is considered Council will be at risk if a different approach is taken with Local Government networks purely on the basis of different ownership arrangements. It is also acknowledged that whatever decision is reached, there will be criticism from some quarters.

However, there is no reason to change the view expressed in my earlier report that, in the interests of equity, the Regional Council should rate Utilities' Distribution Networks, both in Local Government and private sector ownership, in the same way as other business ratepayers; all should be rateable and levied on WRC rates made on a capital value basis.

4. **Recommendations**

That the Committee recommend that Council:

- (a) Receive the report and note the contents; and*
- (b) Not remit rates for Local Government owned or other Utilities' Distribution Networks with effect from 1 July 2002.*

TED MAGUIRE
Council Secretary

Attachment 1: Report 02.202
Attachment 2: Legal Opinion from Oakley Moran