caring about you & your environment

Report 02.202
16 April 2002
File: E/6/1/1
Ted/ctteeReports

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

Rating of Utilities' Distribution Networks

1. Purpose

To recommend that Regional Council rates should be levied on Utilities' Distribution Networks.

2. Background

2.1 Utilities' Networks – Liability for Rates

As advised in Report 02.109 of 27 February, an Appeal Court Judgement *(Auckland City v Telecom)* has confirmed that utilities' networks are liable for rates. The networks include:

- Telecommunications
- Electricity
- Gas
- Water
- Waste Water

The WRC's bulk water pipeline system is one example of such a network.

The liability only applies where a council's rates are levied on a capital value or annual value basis.

There is no liability for rates if they are made on a land value or land area basis, since there is commonly no land ownership involved. Generally, the networks are on/in land owned by other parties (e.g. local authorities' roading corridors). Unless specifically exempted, the land is already liable for rates.

2.2 WRC Liability for Rates

Some WRC facilities, such as the Water Group's water treatment plants are already subject to rates. In the current year, this Council will be paying rates totalling $512,000 with almost half ($232,000) payable on water treatment plants, pumping stations and reservoirs.

As a consequence of the judgements, the Valuer-General, sometime ago, prepared instructions to valuation services providers, requiring that all networks be on rating rolls by 30 June 2002. These rolls are of course the responsibility of territorial authorities, not the Regional Council.

Although all this Region's valuation rolls now include the networks, it seems very likely that there could be challenges to valuations and valuation methodology by some network providers (the gas industry has been lobbying strongly that networks should not be rateable). There could also be subsequent litigation.

3. Comment

(1) Total Value of Utilities' Networks

The total value of the Utilities' Networks in the Region is substantial, comprising 4.21% of the equalised capital value (ECV) of the Region, as shown in the table below.

City/District	TA Networks $	WRC Network $	Other Networks $	Total $	All Networks as % of Region's Capital Value
Wellington	659,250,000	35,670.000	242,587,000	937,507,000	3.82%
Lower Hutt	280,010,000	28,995,000	92,974,500	401,979,500	5.00%
Upper Hutt	69,545,000	14,230,000	47,365,000	131,140,800	4.83%
Porirua	151,032,000	19,200,000	59,996,500	230,228,500	6.74%
Kapiti	97,025,000	-	78,909,000	175,934,000	4.05%
Masterton	21,175,000	-	26,228,000	47,403,000	2.54%
Carterton	5,003,000	-	13,703,000	18,706,000	2.33%
South Wairarapa	15,660,000	-	20,807,000	36,467,000	2.65%
TOTAL	1,298,700,000	98,095,000	582,571,300	1,979,366,300	4.21%

(2) Rating Liability

Once on the rating roll, networks become liable for rates of both territorial local authorities and regional councils where those rates are made on a **capital value** or **annual value** basis. We have a situation in some districts within this Region where the local council's rates are made on a land value basis, while most of ours are made on a capital value basis (with Scheme rates mainly on a land area basis).

Accordingly, in all cities and districts, there would be a liability for WRC rates, except those made on a land area basis. Wellington, Hutt and Porirua City Councils rate on a capital value basis and all networks in those cities, including any belonging to WRC, become liable for those Council's rates. Upper Hutt City Council has proposed a change from land value to capital value rating.

Other territorial authorities rate on a land value basis and networks in their areas will not be liable for territorial authority rates.

(3) **Approaches to rating of Utilities' Networks**

(a) As noted above, the Territorial Authorities in this Region that rate on a capital value basis and therefore can rate Utilities' distribution networks are:

- Wellington City Council
- Hutt City Council
- Porirua City Council

The three Territorial Authorities have already agreed to rate utilities but each follows a slightly different approach:

(i) It is understood that Porirua City Council proposes establishing a separate differential for commercial Utilities because Utilities Networks are "located in business, residential and rural environments". The City Council's proposal is that, it establish a separate business differential with rates set at the average City Council rate for the city.

(ii) Similarly, Hutt City Council is proposing to alter its differential rating scheme, by creating a separate rate for Utility Networks and to set the differential factor for this new group at 1.5 times its differential rate.

(iii) Wellington City Council is treating Utilities, including those of WCC, in the same way as other non-residential ratepayers.

(b) The Wellington Regional Council is in a different position to the Territorial Authorities. Unlike those Authorities, it cannot levy a general rate on a differential basis, nor can it levy a uniform charge. Also we cannot follow the approach of each Territorial Authority in its own city or district but must rate on a consistent basis across the Region.

Even where a Territorial Authority rates on a land value basis (which means it cannot rate Utilities' Distribution Networks) this Council must consider rating the Networks, including those of the Territorial Authorities, because the Wellington Regional Council's rating system is based on capital value.

(c) In my view Local Authorities' Networks, and those of private sector organisations, cannot be treated in a different way. Equity requires, Networks that are comparable to be treated in a similar fashion for rating purposes. To do otherwise will only invite other classes of ratepayers to seek special treatment. Indeed, in some cases local authority waste water systems, for example, have been built, owned and are operated by the private sector, but in future ownership will revert to Local Government (i.e. the build, own, operate and transfer principle). An example of this is the Wellington City Council waste water treatment facility at Moa Point.

(4) **Revenue Estimates**

Assuming that Utilities' Networks including those of Territorial Authorities and the Regional Council, are levied on the same basis as business rates, the estimated revenue from WRC rates on the Networks is as follows:

City/District	TA Networks $	WRC Networks $	Others $	Total $
Wellington	698,739	37,807	257,118	993,664
Lower Hutt	514,266	53,252	170,757	738,276
Upper Hutt	100,639	20,592	68,543	189,774
Porirua	301,415	38,317	119,735	459,467
Kapiti	115,799	-	94,178	209,977
Masterton	14,852	-	18,396	33,248
Carterton	3,687	-	10,098	13,785
South Wairarapa	11,114	-	14,767	25,881
TOTAL	1,760,511	149,969	753,592	2,664,071

These estimates are based on the initial roll values and current (2001/2002) "cents in the dollar" for all regional rates.

From an overall rating position, the impact is on how "the cake is cut" not "the size of the cake". This would mean that WRC rates for 2002/2003 for many ratepayers would decrease except where there are valuation related increases.

(5) **Practical Implications of Rating Utilities' Networks**

There is no doubt that the new rate will create a "money go round" where some groups will pay less rates and the costs are likely to be passed on by Utilities through their charges, or by Territorial Authorities through their rates. There is a view that the Regional Council rates on Local Authority Networks will mean a loss of transparency, as the Territorial Authorities' rates will include a significant amount that those Councils will, in turn, be paying by way of rates due to the Regional Council.

Territorial Authorities on capital value rating, will of course, be levying their own rates on their networks as well as the Regional Council networks. Also, the officers responsible for rating policy in the Region's Territorial Authorities are aware of the changes proposed in this Report.

In terms of the public reaction, even though the principle of rating liability of Networks is firmly established in law, Network owners will no doubt take what steps they can to reduce their rating liability – just as any organisation will seek to minimise taxation liability.

Given that our legal powers are more restrictive than those of a Territorial Authority, Council should think very carefully if it were of a mind to consider setting up a special differential class for this class of ratepayer. While plausible cases can be made, any exceptions to treating them in a way differently to other business classes would in my view only encourage other classes of ratepayers to believe they have little direct benefit from particular rates. This would lead them to also seek differentials favouring their situation.

(6) **Conclusion**

In the interests of equity, it is considered that the Regional Council should treat 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.

(7) **Action Required**

Based on legal advice, a change as proposed will require some alternations to Special Orders relating to the WRC's Transport and Stadium purposes rates. These changes relate to definitions of classes of ratepayers (Reports 02.193 and 02.204). As indicated in Report 02.193 other changes are also proposed to the Transport Rate Special Order.

4. Communications

Reference is made to the proposed changes on the Council's proposed Annual Plan. Also, the Special Order advertisements would include appropriate references to the proposed alterations.

5. Recommendation

That the Committee recommend:

(a) Wellington Regional Council rates be levied on Utilities' Distribution Networks.

(b) Note that Special Orders to be considered at the Special meeting of Council, following this meeting, include the recommended changes.

TED MAGUIRE
Council Secretary