

Submission by Dr Nick Legge to ESC's draft assessment of GMW's 2023 submission on pricing from 2024-2028.

Failure to compare GMW's charges for D&S unregulated diverters and Goulburn Valley Water's charges for reticulated untreated water:

My submission pointed out that GVW's charges for domestic raw-water consumers are on par with GMW's charges for D&S diverters. But whereas GMW's unregulated D&S diverters must pay for their pump, for pump maintenance, for fuel or electricity for pumping, for a storage tank and for installing and maintaining the pipes connecting the pump with the tank, GVW's raw-water customers bear no such costs. Coliban Water also supplies untreated water and while its charges are higher than those of GVW, it would still be cheaper on a like for like basis, considering the absence of any service unregulated D&S diverters receive from GMW.

Given that economic efficiency and the long-term interests of consumers are at the heart of ESC's role, why has ESC entirely ignored the significant price disparity between GVW's charges and those of GMW for an equivalent customer class?

In answering this question from me at the April forum ESC's Executive Director Price Monitoring and Regulation stated:

“I guess the task we have, nick, is to look at the costs of Goulburn Murray Water and the costs of their services, it's not to compare them to other water businesses or to Goulburn Valley Water”

repeating this claim later

“our task isn't to compare between authorities, but to consider what are the costs incurred in the pricing proposal put forward by the water business.”

It appears from this statement that in assessing GMW's proposals, and my criticisms of them, ESC has not just erred in law (and in so doing made a material error of fact), but has added to an impression of bias in favour of regulated entities in ESC decision-making.

Not only is there no basis in the ESC Act for ESC's claim, it is at odds with many of its explicit statutory obligations, including to:

- (a) consider international and interstate benchmarks (ESC Act)*
- (b) ensure that regulatory decision making and regulatory processes have regard to any differences between the operating environments of regulated entities (ESC Act)*
- (c) consider the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made (ESC Act)*
- (d) ensure that regulatory decision making and regulatory processes have regard to any differences between the operating environments of regulated entities (Water Industry Act S.4C(b))*
- (e) consider both long and short term [. . .] equitable considerations (Water Act S.93(c)(i))*
- (f) promote the long-term interests of Victorian consumers [. . . by having . . .] regard to the price, quality and reliability of essential services (ESC Act)*

ESC appears to have interpreted the 'regulated entities' or 'regulated industry' grouping cited in three of the above six provisions refers only to 'rural water corporations' rather than the 'regulated water industry', with no rationale for such an interpretation. Of all the essential services that ESC is supposed to regulate, the provision of water for domestic consumption is probably the most essential of all, but ESC has chosen to ignore, without legitimate reasons, the significant disparity in water price between domestic consumers in rural part of GMW's catchment and domestic consumers in adjacent urban supply areas.

Failure to consider the unreasonable basis for the Customer Fee

In the case of the Service Point fee, EGIS found – and ESC agreed – that GMW's averaging of disparate deeming costs across all unmetered users was wrong, as was its modelling of inspection and surveillance costs and then lumping costs for all unmetered service points on unregulated streams with D&S-only service points in different systems.

Yet EGIS decided, and ESC accepted, that averaging all billing, record keeping, debt management and customer inquiry costs across all customers, regardless of the complexity of their services (which impacts on both record keeping and billing), was fine, defending this by claiming that the current approach is “administratively simple and easy to explain” and that deriving a more granulated cost-reflective fee structure would be too expensive.

How can ESC's draft decision to require detailed costing be OK for inspection and surveillance within the Service Point fee bucket, but not for the billing and record keeping – a far cheaper exercise – elements of the Customer Fee?

In his response to my question on this at the April forum, ESC appeared to misinterpret it as applying only to unregulated D&S diversion customers, when in fact it related to GMW's entire customer base, as was made clear in my ESC submission.

So perhaps particularising my question will put the matter beyond doubt:

GMW's pricing submission indicates 23,684 customers, each of whom are set to be charged \$134, raising a total of \$3.2m in 2024-25.

In contrast, GMW's pricing submission reports 26,434 water delivery service points and 11,755 diversion service points totalling 38,189, while DGC Aither reports 37,493 service points, of which 18,700 are D&S or unmetered. The proposed unmetered/D&S tariff of \$140 would therefore raise \$2.6m in 2024-25.

So despite \$0.6m more being raised by the customer fee and equally questionable assumptions underpinning the customer fee, ESC and EGIS chose to simply accept GMW's assertions that deriving a fairer basis for the customer tariff would be too costly.

Yet both record keeping and billing costs are almost certainly largely driven by the number of service points, a matter which could be tested relatively easily. Customer inquiry costs are also likely to be higher for customers with more services.

Assuming that:

- two thirds the total 'customer service' cost bucket relates to record keeping, billing and customer inquiries, and
- these cost components are indeed driven primarily by service points, and
- 15,000 customers have only a single service point, and
- that GMW is operating its customer services efficiently,

then a fairer, more efficient and still simple customer tariff raising the same revenue would be \$110 for single service point customers and \$175 for those with two or more service points. An alternative interim approach would be to simply cut the customer fee for single service point customers to \$110 and require GMW to find extra savings to make up for the \$0.36m revenue hit.

It seems that GMW's goal - - abetted by support from the various Water Service Committees which effectively represent big users - - is to continue to make small users bear an unfair share of its costs.

Failure to examine the service point basis of the Access Fee for unregulated diverters

My ESC submission argued that the access fee for unregulated diverters should be based on entitlement volume rather than service points, but the draft decision chose to ignore this. The EGIS Report does have a section on the access fee but merely states – with no supporting evidence – that “GMW has demonstrated that the costs vary with the number of service points rather than the volume of entitlements”, ignoring the fact that in the absence of big diverters, ie irrigators, all water use would be D&S only and the activities that the access fee covers would therefore be almost entirely unnecessary.

I asked at the April forum if ESC realised that its largely uncritical reliance on GMW assertions and on findings by consultants - - developed without consultation with customers - - on top of ESC ignoring various arguments advanced by customers, could be seen as bias – whether conscious or unconscious – in favour of the regulated business rather than its customers?

In responding to this question from me at the forum, ESC's Executive Director Price Monitoring and Regulation stated:

“What we are required to do is to consider the proposal before us. We've taken regard to the issues raised, we can't overrule or change the nature of how they charge their tariffs, this is if they meet the requirements of the Water Industry Regulatory Order then we are required to approve it. So its not an active, we don't go and design their tariff structures for them and an additional or new approach. We have regard to things that come in submissions where they're relevant”

My submission argued in some detail how GMW's submission failed to meet the requirements of Clause 11 of the WIRO, however nowhere did ESC's Draft Decision examine this failure, further confirming, if that were necessary, ESC bias in favour of GMW.

Even had it met the requirements of the WIRO it would still be within the ESC's power to change the way a tariff is set. This is made clear in S.33(5) of its Act:

A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.

However since GMW's submission did not meet the requirements of the WIRO, despite ESC apparently finding that it did, this point is academic.

I return to the point made in my submission about the access charge. Mr Peter Serpell correctly noted at the Forum that D&S users are exempt from rationing at times of low flow when irrigators are not, but my point remains that in the absence of irrigators there would be no need for the access charges applicable to unregulated diverters. In other words it is irrigators that make it necessary for the service funded by the charge to exist which makes a service point basis entirely unreasonable.

Moreover to the extent that D&S diverters might be seen as beneficiaries, so are private rights holders who are effectively free-loading on the services that GMW provides, and are therefore being subsidised by paying users. And indeed rationing irrigators also has a beneficial environmental impact (and one that the Water Act recognises through the setting of permissible consumptive volumes and sustainable water strategies), by maintaining the biodiversity intrinsic to our streams and waterways. To that extent it should be general taxpayers who share some of GMW's costs, but nowhere does either GMW or ESC contemplate this issue.

GMW could have made - - and could still make - - its charging system fairer by charging the Victorian Environmental Water Holder (VEWH) for a share of GMW's work on resource management, rosters and restrictions, and inspection and surveillance. Its work in these areas benefits not just extractive users who currently fund that work, but also the VEWH which is also a clear beneficiary.

Uncritical adoption of PREMO rating for customer engagement that GMW awarded itself

Another example of ESC bias can be seen in the way it accepts the PREMO rating of 'standard' that GMW awarded itself for customer consultation. Its Draft Decision defends this as follows (p15):

We recognise the perspectives raised by unregulated diverters on Goulburn-Murray Water's engagement and have weighed these against factors in favour of a 'Standard' rating.

After considering the entirety of Goulburn-Murray Water's engagement across its diverse customer base, our preliminary view is we agree with its self-rating of 'Standard' for its price submission engagement. This is based on the overall suitability of its engagement program for the majority of its services, and the level of influence afforded to customers particularly at the early planning stages through its engagement with its water services committees.

This statement ignores the fact that the 'perspectives' raised by unregulated D&S diverters, are much more than 'perspectives', they are facts:

- the fact that ESC obliged GMW to pay special regard to unregulated D&S diverters generally (not just the Upper Ovens group), which its 'extensive' consultations clearly did not,
- the fact that GMW's Pricing Submission continues to describe the DTS as having been based on 'extensive consultation' with diverters (table 65 of Pricing Submission), which as ESC found in 2016 was not so,
- the fact that its Water Services Committees comprise irrigators, not domestic customers, and that over the years GMW has made no attempt to rectify this despite the preponderance of D&S diverters within its customer base,
- the fact of GMW's explicit belittling of the views of unregulated D&S diverters (table 58 of Pricing Submission), and
- the fact that despite the 'extensive' engagement touted by GMW, there was 'limited feedback' on tariffs (p.75 'At a Glance' text box), which reflects how inadequate the 'extensive engagement' process was, rather than widespread customer satisfaction as GMW might want us to believe.

Conclusion

Based on the arguments in both this submission and in my previous submission, and from ESC's statements at the Forum on 23 April, it is clear that the ESC's approval of GMW's charges for unregulated D&S diverters, aside from its request for GMW to slightly reduce its Service Point charges, is irretrievably flawed.

The most defensible course for ESC to now take would be to accept this state of affairs and to require GMW to change the manner in which its tariffs are set and in so doing to substantially reduce its charges for D&S users on unregulated streams.

Nick Legge, Unregulated D&S Diverter in Taggerty, 7 May 2024