



# Difficulties in Regulating a State Owned Utility

The Case of National Water Commission

# Format of Presentation

- Background
- Existing institutional, legal and regulatory framework
- Highlight the main difficulties the OUR experience in regulating the NWC
- The way forward

# Background

- ☞ Highly capital intensive and requires huge amounts of capital investment
- ☞ National Water Commission (NWC) is main provider but there 3 other private operators
- ☞ Previously regulated by Minister with portfolio responsibilities for water sector
- ☞ Independent regulation created after passage of OUR Act in 1995 (amended 2000)

# Institutional Framework – Water Sector Policy

- The Water Sector Policy of November 2000 published by the Ministry of Water and Housing (MWH)
- Outlines how GOJ expects to see the water sector operate and evolve overtime

# Legal Framework – NWC Act

- NWC Act predated policy
- Outlines the responsibilities of the Minister and NWC
- Minister is responsible for selection and termination of board members
- Approval of capital investment, which were primarily funded by GOJ
- Still views the minister of regulator and with significant supporting role by NWC

# Legal Framework – OUR Act

- OUR Act (and amendments) also predated policy
- Unable to carry out some of its functions effectively due to the existing provisions in NWC Act

# Difficulties

- Difficulties can be summarized under following categories:

- Confusion in existing mandate:**

- (a) Existing legislation gives the OUR and Minister powers to regulate the NWC

Results in OUR unable to develop a framework that will result in an efficient outcome for the NWC.

# Difficulties (cont'd)

## ☛ Power of Minister

(a) Minister selects and decides tenure of board members. Board maybe more inclined to act in accordance with his dictates.

(b) Projects primarily funded by GOJ, need ministerial approval. For the most part, determine the areas in which such projects are undertaken.

© NWC often required to assume loan obligations for several uneconomic extensions which affects level of profitability



# Difficulties (cont'd)

## ✦ **Conflict in legislation**

(a) OUR should process licence and make recommendations to Minister

(b) NWC should also process and issue licence

© OUR required to define service quality standards. NWC Act absolve NWC of penalties for poor service quality

## Difficulties (cont'd)

- ☛ **Lack of cohesive planning in provision of sewerage service**
  - (a) Sewerage plants developed without consideration of utilization affordability issues
  - (b) Persons with established on-site sewerage disposal, refuse to pay for sewerage service
- © Revenues from sewerage services rolled water operations, ignoring treatment of waste and maintaining waste water quality standards defined by NEPA

# Difficulties (cont'd)

## ☛ **Lack of Data**

(a) OUR forced to estimate the operations of NWC which may result in under or over cost recovery

# The Way Forward – short and medium term

## NWC

- Increase in punitive damages should act as deterrence and result in improvement in UFW
- Enforcement of provision to value and sell properties should reduce level of receivables
- NWC should self finance projects and reduce involvement of GOJ in the funding of projects

# The Way Forward- short and medium term

## Government

- New water sector act will harmonize existing pieces of legislation and delineate role of Minister, NWC and OUR
- Pave way for more private sector participation
- NWC act will be amended to relieve it of regulatory, licencing and rate making capacities

# The Way Forward – short and medium term

## ➤ The OUR should:

- (i) increase the details involved in the setting of targets,
- (ii) make international lenders link performance targets and reports submissions to loan conditions,
- (iii) publish efficiency trends of NWC, and

# The Way Forward – short and medium term

- (iv) Incorporate expected improvements in performance targets at tariff reviews.
- (v) Develop time plan on information submission by NWC. Resort to legal provisions if NWC fails to adhere to the plan

# The Way Forward – long term

Ultimately the NWC corporate structure should change to that of a company.



# The Way Forward – long term

- There are apparent trade offs to changing the corporate structure of NWC
  - (a) NWC may become more resistant to regulatory decisions
  - (b) May become more litigious
  - © To achieve full cost recovery tariffs maybe required to significantly increase tariffs.



Thank you