
From: Julian Tranter [REDACTED]
Sent: 28 October 2013 16:59
To: Jacob Wood
Cc: Mark Holloway
Subject: Payment terms consultation

Jacob,

Thank you for the opportunity for Thames Water to respond to Ofwat's payment terms consultation. We broadly agree with Ofwat's proposals but note that if implemented the approach would lead to inconsistency with current retail market payment arrangements defined in Ofwat's access code guidance. We recommend that in advance of 1 April 2015, Ofwat consider aligning the current market arrangements with its price control assumptions as well as the future market arrangements being developed by Open Water.

Details of these variances are set out below together with some potential changes that you may wish to consider.

Billing period

Ofwat propose that a billing period of a calendar month would be appropriate, however it is not necessarily optimum given the direct services are delivered on a daily basis. There is no apparent reason why wholesale services should not be allowed to be billed on a daily basis. The common contract set out in current Ofwat Access Code Guidance allows the new entrant discretion to determine the billing period (Common Contract Schedule 2 Section 2.1 Payment of charges) but not the wholesaler which is somewhat perverse given the wholesaler is carrying the revenue risk. It is our view that the wholesaler, so long as they are meeting their legal obligations, should have discretion to bill for its services at any frequency to manage its cash flows and risks.

Payment period

Ofwat propose that the payment period be 30 days from the last day of the billing period, or 15 days after the invoice is deemed to be received. The common contract requires that payment is due and payable within 14 days of receipt of invoice. (Common Contract Schedule 2 Section 2.4 payment of charges)

Initial invoicing

Ofwat propose that initial invoicing should happen 5 working days after the end of the billing period. However current terms for new entrant retailers in Ofwat's common contract are more flexible allowing retailers absolute discretion as to when the initial invoice is issued (Common Contract Schedule 2 Charges Section 2.1 Payment of charges). In our experience retailers are making use of this flexibility and in one case have sought an initial invoice to be issued no less than 26 days following the end of the billing period.

Collateral requirements

We welcome Ofwat's proposals to allow companies protection from default. We note that the common contract does not allow for any form of collateral beyond payment in advance (Common Contract Schedule 2 charges Section 3.1 Charges Adjustments). It goes further to expressly forbid a range of potential collateral arrangements such as a letter of guarantee.

"Each Party acknowledges that in entering into this Contract it does not rely on any representation, warranty, collateral agreement or other assurance of any person (whether a Party to this Contract or not) that is not set out in this Contract or the documents referred to in it." (Common contract Schedule 1 Section 27.2 Entire Agreement)

Mandating/Flexible contract terms

We would also suggest that payment terms are mandated and subject to change control rather than being 'negotiable' as they are now. The fact that they are negotiable means that some terms have been left open or not fully thought through causing issues for parties in implementing the terms. Mandating the terms is likely to result in

greater engagement and certainty by all parties and in particular new entrant retailers who will be able to cost the price of entering the market. It is also a barrier to entry if entrants face uncertainty over the price of entry.

Terms for each product/ Service covered by a market e.g. non potable water and highway drainage

The payment terms will need to be specified for each market that is being developed/ or is currently in operation and not just all goods and services in a single market as Ofwat appear to suggest in Section 4.1 of their consultation. Retailers are buying water commodity, water transport services, wastewater transport and differing forms of waste treatment from wholesalers and it cannot be assumed these are all in the same market. Ofwat should further specify whether payment terms will apply in all markets as well as to all goods, services and products in a market.

Assessment Criteria

The decisions made on the consultation should be primarily based on the legal obligations including those related to the existing combined supply arrangements as 'retailers', can hold a Combined Supply Licence.

Kind regards

Julian Tranter

Market Development Manager

Thames Water Utilities Ltd, Clearwater Court, Vastern Road, Reading, RG1 8DB

