



## **Water Services Regulation Authority**

### **Water Industry Act 1991 Section 8(3)**

#### **Proposal by the Water Services Regulation Authority (Ofwat) to vary the Appointments of Independent Water Networks, Affinity Water and Southern Water as water and sewerage companies.**

This notice is a consultation on this proposal. The consultation period will last for 28 days. Having considered any representations submitted in response to the consultation, Ofwat will decide whether or not to make the variations to these companies' appointments.

#### **The Site**

Independent Water Networks has applied to be the water and sewerage services company for a development consisting of 1,050 household properties at a site called Martello Lakes, in Hythe, Kent (the Site). The Site is at present within the Water Supply Area of Affinity Water and the Sewerage Services Area of Southern Water. IWN expects the site to be fully developed by 2023.

#### **The proposal**

Ofwat proposes to:

- (i) vary the appointment of Independent Water Networks as a water and sewerage company by adding the Site to its Water Supply and Sewerage Services Areas; and
- (ii) vary the appointment of Affinity Water as a water company by excluding the Site from its Water Supply Area; and
- (iii) vary the appointment of Southern Water as a water and sewerage company by excluding the Site from its Sewerage Services Area.

By means of these variations, Independent Water Networks will become the water and sewerage supplier for the Site.

## Policy for new appointments and variations

The new appointment and variation mechanism, set out in primary law<sup>1</sup>, provides an opportunity for entry and expansion into the water and sewerage sectors by allowing one company to replace the existing appointee as the provider of water and / or sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing appointees to expand their businesses.

When considering applications for new appointments and variations, Ofwat operates within the statutory framework set out by Parliament, including our statutory duty to protect consumers, wherever appropriate by promoting effective competition. In particular, in relation to unserved sites, we consider that we must ensure that the future customers on a site – who do not have a choice of supplier – are adequately protected. When assessing applications for new appointments and variations, the two key policy principles we apply are that:

1. customers, or future customers, should be no worse off than if the site had been supplied by the existing appointee; and
2. Ofwat must be satisfied that an applicant will be able to finance the proper carrying out of its functions as a water and/or sewerage company.

We clarified these two policy principles in February 2011 when we published our 'New appointments and variations – a statement on our [policy](#) and [process](#) for new appointments and variations'. In November 2012, we published '[Statement on our approach for assessing financial viability of applications for new appointments and variations](#)'. This states that we will adopt a company-based assessment of financial viability, rather than a detailed site-based assessment, where it is appropriate to do so.

When we assess whether customers will be no worse off as a result of the appointment, we not only consider the customers on the site but also the generality of customers. These include not only the customers of the existing provider but also customers more generally across England and Wales, who in our view benefit from the effective operation of the new appointment and variation mechanism.

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<sup>1</sup> The legal framework for new appointments is set out in the Water Industry Act 1991 (WIA91). Section 7 of the WIA91 sets out the criteria by which an appointment or variation may be made. Section 8 sets out the procedure for making that appointment or variation.

## The application

Independent Water Networks has applied to be the water and sewerage company for the Site under the unserved criterion set out in section 7(4)(b) Water Industry Act 1991.

### Unserved status of the Site

To qualify under the unserved criterion, an applicant must show that at the time the appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee. Independent Water Networks submitted a report (from an independent professional advisor appointed by it) which verified the Site as unserved for water and sewerage services. We shared this report with Affinity Water and Southern Water, who both agree that the site is unserved. Having considered the information that we have received about the Site, we are satisfied that the Site is unserved.

### Protecting customers

Ofwat acts to protect consumers, especially those who are unable to choose their supplier. In assessing applications to supply new development sites, Ofwat acts on behalf of end-customers who are not yet on site, to protect their interests. The fact that future customers on a site have not directly chosen their supplier is not a position unique to new appointments – very few customers in England and Wales are able to choose their supplier<sup>2</sup>.

Recognising this, our assessment of an applicant's proposals includes analysis of its plans to ensure customers will be at least no worse off in terms of their annual bills and levels of service than if they had been supplied by the existing appointee. We will continue to protect customers on the Site by regulating the new appointee's prices and service levels.

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<sup>2</sup> The only customers that can normally choose their supplier are non-household customers that consume at least 5MI per year and are supplied by a company that is wholly or mainly in England (and at least 50MI for companies wholly or mainly in Wales) and satisfy the Water Supply Licensing (WSL) eligibility criteria. Those non-household customers that consume at least 50 MI in England (and at least 250 MI in Wales) can switch suppliers under either the WSL regime or under the new appointments regime.

## **Customers on the Site - price**

Independent Water Networks will take a bulk supply of water from Affinity Water to supply the Site, and will discharge from the Site into Southern Water's sewers.

Independent Water Networks proposes to offer customers a 5% discount on the volumetric charge for water services compared to that of Affinity Water, while matching Southern Water's fixed and volumetric sewerage charges.

Having considered Independent Water Networks' pricing proposals, we are satisfied that customers will be at least no worse off in terms of their annual bills than if they had been served by Affinity Water and Southern Water.

Currently, Independent Water Networks' conditions of appointment provide that Independent Water Networks' price limit is set by reference to the charges of the previous providers for each of its sites. In this case, Independent Water Networks may not charge customers on the Site more than Affinity Water's charges for water and Southern Water's charges for sewerage. We consider that, given Independent Water Networks' small size, this represents a more proportionate way of regulating its prices than subjecting it to a full bespoke price review as we do for larger companies. However, condition B of Independent Water Networks' conditions of appointment allows us to set a specific price limit for Independent Water Networks. This condition is temporarily suspended but we will activate it when we consider it is appropriate to do so. This is unlikely to be before 2019.

## **Customers on the Site - levels of service**

Independent Water Networks is subject to the same customer service level requirements as other water and sewerage appointees.

## **Guaranteed Standards Scheme (GSS) compliance and base service levels**

Independent Water Networks has submitted information about its proposed service levels, under:

- the statutory requirement of the GSS Regulations;
- our service indicators; and
- its own company standards.

We have assessed these planned levels of service and are satisfied that they match or exceed those typically achieved by Affinity Water, Southern

Water and the sector as a whole.

## **Codes of Practice**

Every appointee is required under conditions G, H and I of its conditions of appointment to publish debt, leakage and customer Codes of Practice. We have assessed Independent Water Networks' Codes of Practice, and are content that these are of an approvable standard so customers on the Site would be no worse off.

## **Independent Water Networks' voluntary standards**

We have also made a detailed check of Independent Water Networks' voluntary service standards, including where it enhances the statutory GSS provisions. We require that Independent Water Networks matches or exceeds Affinity Water's and Southern Water's own standards (except where there is reasonable justification for not doing so).

Examples of where Independent Water Networks will offer improved customer service compared with Affinity Water and Southern Water include:

- Independent Water Networks' call centre opening hours are longer than Affinity Water's. Independent Water Networks offers 8am - 8pm Monday to Friday and 8am - 1pm on Saturday, whereas Affinity Water offers 8am – 5pm Monday to Friday. Independent Water Networks matches Southern Water's opening hours;
- enhanced GSS standards in a number of areas, for example responding to billing enquiries within 5 working days or making a £35 payment compared with Affinity Water's £20 payment and Southern Water's £25 payment; and
- some additional standards, for example, Independent Water Networks will pay up to £50 per day for alternative accommodation for customers who experience internal sewer flooding and have to move temporarily due to ill health.

However, Independent Water Networks does not propose to match Affinity Water and Southern Water in some ways, for example:

- Independent Water Networks currently has no charitable trust fund. Charitable trusts are set up on a voluntary basis by companies to assist those in financial difficulty. Affinity Water and Southern Water do have charitable trust funds; and

- Independent Water Networks offers more limited ways for customers to contact it than Southern Water. For example, Southern Water has a variety of telephone numbers including Freephone, 0845 and 0300 numbers whereas Independent Water Networks has one single local rate telephone number (as does Affinity Water).

While the areas in which Independent Water Networks does not propose to match Affinity Water and Southern Water are not statutory or appointment requirements, we have explained to Independent Water Networks that these areas must be kept under review as its customer base expands. Independent Water Networks has committed to do so. As Independent Water Networks extends into different existing appointees' areas, all Codes will be assessed against other existing appointees' policies and we will request improvements we judge are required as its customer base grows.

Having considered Independent Water Networks' overall proposed service levels, and compared them with those of Affinity Water and Southern Water, we are satisfied that customers on the Site will receive a level of service that is comparable with the level of service that they would have received had they been served by Affinity Water and Southern Water.

### **Developer choice**

Ofwat takes into consideration the choices of the site developer. In this case, the Site developer has said that it wants Independent Water Networks to be the water and sewerage company for the Site.

### **Environment Agency (EA) and Drinking Water Inspectorate (DWI)**

We take the views of these organisations into account before progressing to consultation on an application for a new appointment. Both EA and DWI informed us that they are content for us to consult on this application.

### **Affinity Water's and Southern Water's existing customers**

In considering whether customers will be no worse off, we also considered the potential effects of this variation on the prices that Affinity Water's and Southern Water's existing customer base may face.

The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect. It is therefore necessary to use a

simplified set of figures. We have expressed the effect in 'per bill' terms to try and quantify the possible effect in an easily understandable way.

Broadly, we have assessed the potential magnitude of this impact by comparing how much Affinity Water and Southern Water might have expected to receive in revenue from serving the Site directly, with the revenues they might expect from serving the Site indirectly via bulk supply and discharge agreements with Independent Water Networks. The lower bound of the range takes into account the benefit to Affinity Water and Southern Water as a result of Independent Water Networks serving the Site, by estimating the costs that Affinity Water and Southern Water are likely to avoid, such as retail costs and capital and operating costs associated with the local network used to serve the Site. The upper bound of the range does not take these avoided costs into account. We look at these differences in revenue and costs over a hundred year timeframe to reflect the long life of the assets that will be used to supply customers at the Site.

In this case, we have calculated that if we grant the Site to Independent Water Networks, there may be a potential impact on the bills of Affinity Water's existing customers of between -£0.01 and £0.00, while there may be a potential impact on the bills of Southern Water's existing customers of between -£0.02 and £0.01.

We are comfortable that these ranges account for the uncertainty in the costs that may be avoided by Affinity Water and Southern Water.

Further, this impact does not take into account the potential spillover benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win new sites. We set out the wider benefits we believe stem from the new appointments and variations regime below.

### **Wider benefits**

The new appointment and variation mechanism provides a means for companies from outside the water and sewerage sectors to enter the market and for existing water and sewerage appointees to expand their businesses.

Entry and expansion (and even the threat of such by potential competitors) can lead to benefits for different customers in different ways (such as developers of new housing sites and household and non-household customers). Examples of benefits delivered via the new appointment and variation mechanism include price discounts, better services, environmental improvements and innovation in the way services are delivered. Benefits can also accrue to the existing appointee's customers, because

when that appointee faces a challenge to its business that challenge can act as a spur for it to raise its game.

These wider benefits that we believe stem from the new appointments and variations regime are set out more fully in our [policy statement](#).

### **Overall assessment of effect on customers**

Overall, we consider that customers on the Site will be at least no worse off with this Site being served by Independent Water Networks than they would have been had the Site been served by Affinity Water and Southern Water. We consider that the potential effect on Affinity Water's and Southern Water's existing customers is very likely to be offset by the wider benefits of the new appointment and variation mechanism. We are therefore satisfied that customers would be no worse off as a result of our granting this variation.

### **Ability to finance and properly carry out its functions**

We have statutory duties to ensure that efficient appointees can finance the proper carrying out of their functions and to ensure that those functions are properly carried out. When a company applies for a new appointment or variation, it must satisfy us that it is able to carry out all of the duties and obligations associated with being an appointed water or sewerage company.

In this case, Independent Water Networks has satisfied us that it can finance its functions and that it is able to properly carry them out.

### **Conclusion and next steps**

In assessing Independent Water Networks' application for this variation, we have considered the general benefits of new appointments. We are satisfied that our two key policy principles have been met in this case, as customers will be no worse off, and Independent Water Networks will be able to finance and carry out its functions. We have also considered the effects of granting this variation on the existing customers of Affinity Water and Southern Water.

We are therefore minded to grant the appointment under the unserved criterion. We are consulting on our proposal to do so.



## **Where to send submissions**

Any representations about, or objections to, this proposal should be sent in a single written submission to Richard Field, Senior Associate, Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA so as to be received no later than 27 March 2015. Submissions can also be emailed to: [Richard.Field@ofwat.gsi.gov.uk](mailto:Richard.Field@ofwat.gsi.gov.uk).