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Dear Ian

Response to Ofwat's consultation "Negotiating bulk supplies – a consultation on our guidance".

United Utilities Water is pleased to have the opportunity to review and contribute to the development of Ofwat's guidance to support the negotiation of bulk supply agreements. Within this response we have sought to highlight where we believe amendments or additions to the guidance would help improve it further.

We are supportive of water trading and the interconnection of water services between companies, for the benefit of customers. We already appreciate the benefits of transferring water across company boundaries with about a third of the water we supply across the North West coming from outside our appointed area.

We share the views expressed in the consultation that there could be significant, national benefits from increased resilience. Projects such as the West East Link Main - a Uuw scheme transferring water over 30 miles from Prescott to Rivington - have greatly improved network resilience to the benefit of our customers. We recognise the potential to use cross border supplies on a national or inter-company basis to alleviate water shortages in times of water scarcity where this is in the long term interests of customers.

Model contract

We share the concerns raised within the consultation that any model contract could become a *de facto* common contract. We are therefore supportive of Ofwat's decision to opt for an approach through which guidance highlights the critical areas for discussion and negotiation between parties. As I set out in my letter of 18 May 2012 to Jon Ashley, Uuw believes that this approach supports greater flexibility within bulk supply contract negotiations, allowing for the creation of innovative solutions to unique problems.

A model contract may have become a default set of terms and conditions which might only be adjusted on an exceptional basis. Given the prospect of appeals under the provisions of S40 and S40A of the Water Industry Act 1991, we believe it would have proven unhelpful if those

parties negotiating bulk supply contracts had believed that the model contract represented a default position in the event of disagreement.

A common contract would have been restrictive and would not have provided the right degree of flexibility to accommodate differences in the context of its use in a range of potential scenarios. Most obviously, the terms and conditions for a fully committed bulk supply arrangement will be different from those for a “best endeavours/subject to availability” arrangement and a restrictive approach to the contract would be counterproductive to Ofwat’s aims. In general, U UW believes that the draft guidance now issued for consultation provides sufficient flexibility to deal with a wide range of potential scenarios whilst promoting water trading.

I now turn to our more specific observations on the detailed guidance.

Wastewater bulk connections and sludge trading

Whilst still in draft form, we believe that there may be an opportunity to further improve the guidance by including wastewater bulk connection and sludge trading agreements, helping promote these activities and the potential associated efficiencies.

Price and non-price terms

The point made within the guidance that negotiations may be accelerated if non-price terms are defined first, with a price for those terms being determined afterwards is well made. In our experience agreements have been delayed by other parties wanting to calculate the price terms and charges before they finalise non price terms.

We would normally expect a bulk supply contract to incorporate a liability clause. We would expect this to include limitations and exclusions on both parties. Parties should be free to negotiate these liabilities on a commercial basis commensurate with the risk profile of the contract. **On this basis, we believe the guidance should recommend that a liability clause be included within the agreement.**

Section 4.1 of the guidance sets out some of the price terms which might be expected within a bulk supply agreement. We consider that price terms may also need to reflect a form of security to be in place from the receiving company to protect the supplying company from debt risk, with the nature of the security provided being reflected in the agreed charges. **We therefore believe that this should be added to the list of possible price terms.**

Facilitating the addition of new sites or connections

In general the specificity of each bulk supply makes the use of one agreement for several supplies more complicated. **We suggest that the guidance should explicitly reference that it is for the parties to the bulk supply contract to decide when it is appropriate to use a single contract for multi sites or an individual site specific contract.**

Ownership and responsibility for the assets

In our experience of bulk supply agreements we have found it useful to include a detailed operational plan within the schedules, setting out in detail responsibilities and activities specific to each bulk supply. This operational plan includes details such as a maximum rate of flow and ramp up/down as well as emergency contact details. **We believe that a detailed operational plan benefits both parties to the agreement and that the guidance should recommend that it should be included within all bulk supply agreements.**

Quality of the water supplied

The wholesomeness of our water supplies is imperative. **We would therefore suggest that Ofwat should make reference in the guidance to the “Water quality protocol for bulk supply agreements” developed by Water UK.** Section 4.5 of the consultation signals the use of this protocol, which we would support.

Duration

The guidance sets out the contractual considerations on duration within section 4.12. We would normally look to have a length of contract commensurate with the level of capital investment involved. Given the longer term horizons employed in water resource planning, longer term agreements provide better assurance. **It is good practice that all contracts have the facility to terminate, that contracts should not last into perpetuity and that contracts should specify a termination date; these points could be made clearer within the guidance.**

We have several historic legacy bulk supply agreements entered into prior to privatisation that are due to run into perpetuity. Whilst historically these agreements may have been fit for purpose at the time, many of these agreements are now restrictive and possibly unfair. **We would urge Ofwat to allow these agreements to be determined under the provisions of S40 and S40A of the Water Industry Act 1991.** Determining these legacy agreements may help promote further trading by removing historic anomalies.

In summary, we believe that in general the draft guidance will meet Ofwat’s stated objective of supporting the negotiation of bulk supply agreements. If you would like to follow up on any aspect of this response further, then we would welcome the opportunity to meet with you and discuss further.

Yours sincerely



James Bullock
Director of Economic Regulation