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13 MAR 2013

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11 March 2013

Ian Hopkins
Senior Analyst, Market Reform Team
Ofwat
Centre City Tower
7 Hill Street
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Dear Ian

Re: Negotiating bulk supplies – a consultation on our guidance

Whilst we welcome much of the content of the consultation document and support the introduction of bulk supply guidance, the document in our opinion fails to tackle the more contentious issues of bulk supplies negotiation. We would advocate a more comprehensive document that reflects the challenges currently being experienced by parties negotiating bulk supply terms in the market today.

We would also suggest separating the guidance for bulk supplies to inset appointments (NAVs) and those providing cross border supplies. Each presents their own unique set of challenges and a generic document may not be appropriate.

We do not support the suggestion of using "bolt on schedules" to enable NAVs to expand existing bulk supply agreements. With the widespread use of interim supplies during the build out of a development, differing termination clauses and site specific operational challenges, such agreements may not be flexible enough to protect the interests of the parties involved.

Whilst recognising the need to avoid unnecessary effort and delay in negotiating supplies, we would contend that a standard form of bulk supply agreement has evolved in the inset market and already underpins negotiations. We do not share Ofwat's view that the drafting of these agreements is materially impacting the application process. In our experience, the key areas of delay in the current application process are in the agreement of the site boundary and unserved status and the modelling of the operational solution. These are not addressed by the consultation document.

We do however welcome Ofwat's support of a termination clause and the recognition of price inflation challenges in long term contracts. The inclusion of a termination clause will enable the periodic rebasing of bulk supply contracts.

In addition to the points above we would like to suggest for inclusion within the guidance document:

- Steps to ensure the efficient use of water resources
- Clarity on the section 40 requirements on existing and likely future customers.

Efficient Use of Water Resources

Our own demand side calculations regarding a site's consumption requirements will frequently differ to those tabled by a NAV (invariably a NAV's demand calculation is higher than those of the incumbent). We believe that there are inherent drivers within the current process that deliver this outcome:

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We welcome correspondence
in Welsh and English.

Rydym yn croesawu gohebiaeth yn
y Gymraeg neu yn Saesneg.

1. NAV's water demand calculations are often done very early in the planning process, when information is frequently sketchy, e.g. most sites will have a commercial element which is largely unidentified.
2. Incumbents can take a broad view on outturns and accept a degree of risk, whilst NAVs have to agree a bulk supply to support their inset application that demonstrates that they have adequate supply to cover all possible outcomes.

This however may be leading to a perverse outcome namely the inefficient use of water resources. We would advocate the introduction of mechanisms within the bulk supply contract to incentivise NAVs to take a more conservative approach to demand side calculations.

This could be done by enabling a contingency arrangement for NAVs during the build out of the development that would make a further pre defined quantity of water available should outturn demand be greater than estimate. This would be done with a corresponding clause that would enable the incumbent undertaker to claw back reserves not utilised by the completed development.

Protecting existing and likely future customers

Under the requisition route, headroom is largely allocated on a first come first serve basis. However section 40 of the Water Industry Act 1991 demands that the impact on existing and likely future customers is considered. The Water Industry Act however is largely silent on the definition of future customers and some guidance on how to interpret this part of the legislation would be helpful.

We hope that our response has been of some help to you, if however we can be of further assistance please do not hesitate to contact us.

Yours Sincerely



Mike Davis
Director of Planning and Regulation