Charging
Ofwat
21 Bloomsbury Street
London
WC1B 3HF

04 August 2017

Dear Sirs,

New Connections Charges for the Future - England

Thank you for providing us with the opportunity to comment on your proposed changes to the rules in relation to new connections charges in England.

We note that the consultation document sets out primarily to consult on proposed changes to:

- the Charging Rules for New Connection Services (December 2016);
- the Charges Scheme Rules (December 2016); and
- Licence Condition C (Infrastructure Charges).

However, within the consultation, consideration is given to the provision of (and charging for) infrastructure by water undertakers to the NAV market, without consideration of the legal framework within the Water Industry Act 1991 which underpins these arrangements. In particular, no consideration is given to the duties set out in Section 40 or the provisions for codes for bulk supply agreements under Sections 40B to 40I.

To the extent that the proposed revisions to the Charging Rules for New Connection Services and Charges Scheme Rules are predicated on an analysis of the provision of infrastructure for the NAV market (and the charges applicable), it seems to us to be premature for the revisions to be implemented without consideration of the applicable legal framework for this market.

Subject to this overall point, we have set out our responses to each of the questions posed below.

Q1: Do you agree that our Option 3 on the treatment of the income offset / asset payments has merit? If not, please explain your reasoning and provide relevant evidence. If so, how and when should this change be brought about?

We note that, under option 3, we would be required to make income offsets to NAVs by adjusting the bulk supply tariff for new agreements struck between 2018 and 2020. When we make income offsets to developers (or equivalent asset payments for self-laid infrastructure) under mains requisitions, we end up adopting/owning the assets. The situation is different with NAVs because the NAV retains ownership of the assets. So option 3 forces us to pay income offsets for assets that we do not adopt.

Further, since option 3 proposes that income offset is achieved through bulk supply prices that are outside the single till, wholesale charges to other customers are not affected. The income offset value will either be recovered through higher charges for other new connection customers or by our shareholders subsidising the NAV's on-site infrastructure costs. Neither of these alternatives seem welcome.

Whilst option 3 may be seen as benefiting competition, without putting up price controlled charges, it may simply be transferring the burden of new NAV income offset payments across all other new connection customers. If this were the case, and taking the interests of new connection customers and existing water customers together in the round, option 3 is perhaps no longer superior to option 2a.

Overall then, our preference is for option 2a, that if we are to offer income offsets to NAVs, then this is best done by income offset against infrastructure charges from 01 April 2018.

Q2: Do you agree with our draft impact assessment? Can you provide quantitative figures in terms of the potential benefits or costs? Is there anything we have missed?

No comments.

Q3: Do you have any comments on the drafting of the possible future change to our rules (set out in Appendices A3 and A4)?

Proposed revisions to Charging Rules for New Connection Services from April 2020	
5b	As currently drafted (and as proposed) the definition is limited to charges and methodologies for calculating charges, while the rules cover matters to be included in the Charging Arrangements that go beyond the charges and methodologies; e.g. requirements relating to the timing and methods of payment. We therefore suggest this definition is amended to: *"b) "**Charging Arrangements**" means a document setting out the matters required by these rules."*
21	It is the responsibility of relevant undertakers in setting charges to ensure that they comply with competition law. By doing so, effective competition for Contestable Work will be facilitated. It is not in our view the role of relevant undertakers to promote competition for Contestable Work. Accordingly, we consider that the word "promote" should be replaced with "facilitate". The word "each" should also be deleted from the proposed revision.

Proposed revisions to Charges Scheme Rules April 2020	
5	Relevant undertakers will set water infrastructure charges and sewerage infrastructure charges under their charges schemes and those charges will be applicable whether or not an income offset is available against those charges. We therefore consider that in the definition of "Income Offset" the words "that would otherwise apply" have the potential to cause confusion and should be omitted. The definition should read: *""Income Offset" means a sum of money offset against the Infrastructure Charge in recognition of revenue likely to be received by the relevant undertaker in future years for the provision of……."* The definitions of "**Water Infrastructure Charge**" and "**Sewerage Infrastructure Charge**" should refer to sections 146(2)(a) and 146(2)(b) respectively.

	We would also suggest the following definition is included: *""**Charging Rules for New Connection Services**" means charging rules issued by the Water Services Regulation Authority under sections 51CD, 105ZF and 144ZA of the Water Industry Act 1991;"*
New rule	We think it essential to keep the concepts of Infrastructure Charges and Income Offsets separate (this links to our comment in respect of Rule 5). Accordingly, we think that this rule would be better worded as: *"A relevant undertaker may (but is not required to) provide for an Income Offset against the Infrastructure Charges. Each relevant undertaker has discretion as to the methodology to be applied to calculate the Income Offset. Such methodology must, however, be clearly explained in the applicable charges scheme."*
New rule	We think that the wording of this new rule can be improved to help provide clarity. *"Relevant undertakers must take reasonable steps to ensure that Infrastructure Charges are set so that the balance of such charges prior to December 2016 between Developers (as that term is defined in the Charging Rules for New Connection Services) and other customers is broadly maintained. Relevant undertakers may only depart from this general principle where (and to the extent that) circumstances render this necessary and must provide clear and objective justification for doing so."*

Q4: Do you have any comments on our proposed licence modification to Condition C (Infrastructure Charges) for English water companies other than NAVs (including the proposed wording set out in Appendix A7)?

We have no comments on the drafting of the proposed modification to Licence Condition C.

We note from Section 4 of the consultation that Ofwat proposes to modify Licence Condition C using the power granted by Section 55 of the Water Act 2014. Our understanding of Section 55, when read with the Water Act 2014 (Commencement No 2 and Transitional Provisions) Order 2014, is that this power cannot be exercised after 31 December 2016. Accordingly, any proposed change to this licence condition must follow the process set out in Section 13 of the Water Industry Act 1991.

If you have any further questions regarding our response, please do not hesitate to contact me.

Yours faithfully,

Christopher Offer
Director of Regulation and Corporate Affairs