

Jan 25th, 2018

Consultation: Bazalgette Tunnel ["Tideway"]
Procurement Waiver

I wish to contribute some comment to the above Consultation.

1. I am a customer of both Bazalgette Tunnel Ltd ("BTL") and Thames Water Utilities ["TWUL"].

Since Aug 2015, when Bazalgette received its licence from OFWAT, I have regularly paid fees to Bazalgette, as their customer and as I am required to do under The Water Industry Act (1991), via payment through my water bill with TWUL.

2. When the award of a licence to Bazalgette was announced in July 2015, I responded to OFWAT's Consultation on this award with seemingly minimal effect.

Many of the concerns I raised at that time, - not least, issues as to: (a) the lack of transparency; (b) the close association between TWUL and BTL (albeit, BTL is supposedly an "independent" utility, as the Secretary of State pronounced to Parliament); (c) the many conflicts of interest between TWUL, BTL and DEFRA; and (d) the overall structure and governance of the BTL/TWUL venture, - still persist today.

3. Under para 4(4)(b) of the SIP Regulation Notice, 14 June 2014, the Thames Tideway Tunnel ("TTT") was "Specified". Schedule 1 of that Notice states, inter alia, that TTT includes: "*from the Acceptance Date: the operation and maintenance of the IP owned structures*", "IP" being the independent utility set up under the SIP Regulation responsible for the implementation of the TTT project.

Hence, it is clear that IP (now BTL) has legal responsibility to operate and maintain TTT under its Licence.

4. However, the TWUL audited Accounts for 2017, p. 117, state that:

"on completion of the TTT, substantially all the risks and rewards of ownership (of TTT) will lay with the company (TWUL). The Company (TWUL) will therefore account for the transaction arrangement with BTL post construction as a finance lease. The tunnel will be recognised as an asset within PP&E (TWUL's Property, Plant & Equipment) and depreciated over the life of the lease. On inception of the lease, the tunnel will be recognised at fair value, being the prepayment plus the present value of the minimum lease payments, with a corresponding liability being recognised as a finance lease payable. Interest will be recognised in the income statement (of TWUL) over the period of the lease".

The above arrangement would seem in direct breach of the intention of the SIP Regulations. TTT/BTL is not “independent”, as the Regulation intended. Operational and maintenance responsibility for TTT is being passed to TWUL.

[BTL Licence Breach No. 1]

5. The BTL Licence, as published by OFWAT August 24, 2015, makes no mention that BTL is allowed to legally assign its rights and responsibilities as a water utility regulated under the Water Industry Act 1991 to third parties, viz. TWUL. Indeed, I am not aware of any other E&W water utility that may have assigned its rights and operational obligations, as seemingly have BTL.

[BTL Licence Breach No. 2]

6. Under Condition G of BTL’s Licence various responsibilities are demanded of BTL in relation to “Customer Information”. This includes providing “customers” with information as to tariffs, complaints, and Code of Practice.

BTL has now had its Licence for close to 2.5 years, yet, I, as a BTL “customer”, have received no such information or contact from BTL. Neither do I know anyone (of the 15mn TWUL customers) who has. This inaction is a clear breach of Licence. Again, there is nothing in BTL’s Licence which allows it to assign such responsibilities.

[BTL Licence Breach No. 3]

7. Hence, given BTL’s disdain for customer interests, I see no reason why any concession, as is currently being considered by OFWAT in relation to procurement, as described by this Consultation, should be allowed.
8. Finally, OFWAT may not be aware that DEFRA/the Environment Agency have confirmed that during a period of 12 months 2016/17 there were no breaches of the dissolved oxygen content in the Tideway, as defined under EU Regulations, the key environmental benchmark for justifying the implementation and expense of TTT.
9. Overall, one concludes from the above, therefore, that, before it is too late, a re-think as to the implementation of TTT is advisable, both in the interests of TWUL customers, - so as not to burden them with unnecessary expenditure, - but also to maintain the integrity and probity of the UK’s privatised water sector.

After all, it is now over 10 years since an independent cost-benefit / Value for Money assessment of TTT has been undertaken. The EFTEC Aug 2015 study for DEFRA recognised this issue (ref. para 2.4), but that study assumed that there had been no significant change in the technical/environmental demand for TTT since 2005. The Environment Agency’s data today (see para 8 above) suggests otherwise.

Hence, is it not time to draw this technical, corporate and financial charade of TTT to a close, and to use the funding so released for more worthy and beneficial causes?

To conclude, I object to the proposed procurement concession for BTL. It reflects: *“throwing good money after bad”*.