



AnGLIAN Water Services Ltd.

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Change of Control
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

8 June 2018

Dear Sirs

Change of control – general policy and its application to Thames Water

We welcome the opportunity to respond to this consultation.

We support the aims of a thriving water sector that holds the trust and confidence of customers and wider society and delivering in customers' interests. To this end, we announced significant changes in March to make Independent Non-Executive Directors the majority group on our Board, reduce shareholder dividends, reinvest £65m to enhance resilience in addition to £100m already committed, and to remove the Cayman Islands Company from our financing structure which we completed in May.

We support the strengthened ring-fencing conditions for all companies, which in many respects incorporate the ring-fencing covenants in our financing arrangements.

We note that Ofwat wishes to satisfy itself that *"any prospective controller has the integrity and the operational and financial capability to assume that role"* and *"that any change of control does not compromise effective management of the Appointee"*. However, we are concerned that Ofwat's proposals in respect of the information requirements on a change of control would impose additional burdens and could discourage prospective owners from investing in the industry and restrict inward investment into the UK supporting growth in infrastructure.

In responding on the specific questions posed in this consultation we have limited our comments to general points of principle on the basis that any proposed modifications to our own licence will be the subject of a separate process where we will be able to comment in detail.

Our comments on the questions posed through the consultation are set out below:



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Registered in England
No. 2366656.

an AWG Company

1) What are your views on the introduction of notification requirements on change of control into the licence information requirements?

- We support the need for responsible owners in the industry. Any change of control of any of Anglian's ultimate shareholders is already subject to contractual provisions from our lenders reflecting the significance they place on these parties. We would be concerned if the proposals set out in the consultation imposed an obligation on us to furnish information to Ofwat in circumstances where the requested information was material non-public information, received under conditions of confidentiality or otherwise restricted.

2) What are your views on the proposed obligation to provide us with information?

3) What are your views on the information that may be helpful for our assessment of change of control?

- The information that is proposed to be asked of investors is extensive and too onerous. In respect of Information on the investor's economic and financial capacity recognition should be made as to the confidentiality and market sensitive nature of data for investors, for example statements of their cashflow forecasts and a bank letter outlining the current cash and credit position. Given the nature of many UK and international investors in the sector, funds and managers and similar entities, this information is unlikely to be available or relevant.
- There are also issues with the disclosure of details of any legal claims against an investor given that disclosure to Ofwat is unlikely to benefit from legal privilege.
- Requiring prospective owners to have equity investment in aggregate of at least £500m in major infrastructure projects and/or companies should be considered in terms of the relative value of the proposed value of the ownership.
- In respect of the proposals for Investors to provide a financing plan, we would need to carefully consider the details, particularly around the scope of refinancing, and clarification should be given as to whether this required at a change of control (whether minority or not) or on an going basis. Clarification should also be given as to whether refinancing is intended to capture a significant change in leverage or on the total debt of the Appointee, as we do not consider it would be appropriate for business as usual refinancing or raising debt to finance our capital programme which is for the Board to consider through its usual governance process.
- It would also seem to be micro-managing for Ofwat to ask for fee arrangements and pricing indications from debt providers.
- We question whether it is appropriate to require disclosure of commercially sensitive provisions which affect the relationship between shareholders but have no direct bearing upon the management of the regulated business. With a majority of INED's on the Appointee board and extensive governance guidelines which we already comply with, we believe that should be sufficient.

4) What are your views on the proposed obligation to require the Appointee to comply with any direction from Ofwat to enforce an Ultimate Controller's undertaking?

- We acknowledge that Ultimate Controller undertakings are required in order to (i) ensure that the Appointee has access to any information it needs to comply with its licence; and (ii) ensure that the ultimate owners of the regulated business refrain from any action that may cause the Appointee to breach any of its obligations under the Water Industry Act 1991. We would be concerned that an Appointee might be put in an invidious position if its Ultimate Controllers refused to comply with the undertaking or disputed a breach of the

undertaking as it would mean a Company (and its Board) potentially suing its own shareholders.

5) What are your views on bringing all the licences up to the same standards, including introducing a requirement to meet the BLTG principles?

6) Are there aspects of the most up to date provisions which you think we need to revisit or amend?

- We are supportive of the proposal that all licences are brought up to the same standards. We already hold ourselves to account to the highest standards of governance and leadership and will consider amendment to the BLTG principles when they are made available. Whilst we understand Ofwat's desire to introduce this additional licence requirement, we consider that there must to be a mechanism (other than judicial review) which enables companies to challenge proposed BLTG principles in circumstances where they are unduly onerous or manifestly unreasonable.
- We are supportive of the proposal to change the composition of regulated company Boards such that independent non-executive directors in the majority.

7) What are your views on how the ring fencing conditions need to be further updated? In particular, in relation to:

a Maintaining an appropriate credit rating and how and when the lock-up conditions are triggered?

b Whether there needs to be a more explicit requirement to inform us of particular events affecting the Appointee?

c Managing potential conflicts of interest where there are cross-shareholdings?

d Safeguarding the autonomy of the Appointee?

e Any other issues?

- In terms of the proposals for any Issuer Credit Rating to be of an Investment Grade and for a cash lock up to occur when the rating is put on review for possible downgrade, we already have this as a condition in our financing documents. Using "an Issuer Credit Rating" is preferable to a rating of specific debt issues as a number of companies issue tranches of debt with different protections for creditors and consequently different credit ratings. We consider anything other than an Issuer Credit Rating would be a mistake and could open up unintended consequences.
- Companies already provide Ofwat with significant data and returns. The current requirement to notify Ofwat of any circumstance that may materially affect the Appointee's ability to carry out its regulated activities is considered to be of an appropriate level.
- We follow and maintain the highest levels of declaration of interests at our Board but the proposed "management of potential conflicts of interest where there are cross-shareholdings" appears to be looking at "commercial" not legal aspects of shareholders being owners of other regulated water companies/regulated entities/market participants. This is a subjective assessment that an Appointee has no power or information to police. We acknowledge, however, the clear difficulty that would arise in respect of situational conflicts (pursuant to section 175 of the Companies Act) where the same individual was a director of more than one Appointee.
- The financing contract to which we are a party contains undertakings that are captured in respect of safeguarding the autonomy of the Appointee requiring it to manage the company's affairs independently of the holding company.

We have no comments in response to questions 8 to 12 which relate specifically to Thames Water.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Plant'. The signature is fluid and cursive, with the first name 'Alex' and the last name 'Plant' clearly distinguishable.

Alex Plant
Regulation Director, Anglian Water Services Limited