
ALLOCATION NOTICE

NOTICE OF DETERMINATION UNDER SECTION 7.4 OF THE INTERIM SUPPLY CODE

10 FEBRUARY 2020

Except as otherwise provided in this Allocation Notice, words and expressions used in this Allocation Notice have the same meaning as they have in the Interim Supply Code (the '**Code**').

1. THE CODE

- 1.1. The Authority has issued the Code pursuant to sections 63AF and 110O of the 1991 Act. The Code sets out the procedure for the provision of Interim Supply in the event that a Licensee is no longer able to provide Water Retail Services and Sewerage Retail Services to Affected Customers. This procedure is set out in more detail below.
- 1.2. Details of the Interim Supply Process are set out at Annex 1.

2. BACKGROUND

- 2.1 Tor Water Limited (the '**Previous Licensee**') ceased to provide Water Retail Services and Sewerage Retail Services to Relevant Premises on 30 January 2020 when South West Water terminated its Wholesale Contract with it. For the purpose of this Interim Supply event the '**Relevant Premises**' are those to which the Interim Duty Supply Points relate. The Interim Duty Supply Points are those that were Registered to the Previous Licensee in South West Water's Area as at the date of the termination of the Wholesale Contract (the '**Relevant Supply Points**').
- 2.2 The Authority issued a Notice of Relevant Cessation of Supply (the '**RCS Notice**') at 9am on Monday 3 February 2020 to each Eligible Licensee¹, South West Water (the relevant undertaker in whose Area there was a Relevant Supply Point), and the Market Operator. The RCS Notice confirmed that:
 - (a) the Previous Licensee had ceased to provide Water Retail Services and Sewerage Retail Services to the Relevant Premises in South West

¹ The Eligible Licensees were those that had elected, or were required to elect, to take on Interim Duty Supply Points in the South West Water Area at the time of the Wholesale Contract termination.

Water's Area on the 30 January 2020 (the '**Date of Relevant Cessation of Supply**').

- (b) the Suspension Deadline² was 4pm on 3 February 2020; and
- (c) the number of Interim Duty Supply Points.

The Authority agreed to the two requests it received to Suspend Election for this interim supply event, resulting in four Eligible Licensees being available to receive the Interim Duty Supply Points.

- 2.3 To determine whether we should use the Interim Supply Offers Process or the Interim Supplier Allocation Process we considered the number of Eligible Licensees available to receive the Interim Duty Supply Points and the number of Affected Customers. We took into account that the Interim Supply Offers Process is more onerous for Eligible Licensees but also considered which process would enable us to potentially seek enhanced customer protection measures for Affected Customers. In this instance the Authority decided that it would seek Interim Supply Offers under section 7.1.3(a) of the Code.
- 2.4 The Authority sent an Interim Supply Offers invitation to the four Eligible Licensees on 3 February 2020. The deadline for the submission of Interim Supply Offers was 9am on Thursday 6 February 2020³. Two Eligible Licensees submitted Interim Supply Offers (the '**Offerors**'). The Authority sought clarifications from both of the Offerors on aspects of their Interim Supply Offers.

3. ASSESSMENT⁴

ASSURANCE ON PROCESS

- 3.1. We asked Offerors to tell us how they proposed to manage the increase in customers.

Rationale: Licensees must be able to provide services to Affected Customers without this having an adverse impact on the services provided to existing customers.

² Aside from Eligible Licensees that are required to elect, Eligible Licensee may choose to Suspend their Election for a particular interim supply event.

³ Following a request from an Eligible Licensee the Authority extended this deadline to 10am on Thursday 6 February for those Eligible Licensees that had not submitted their by that point.

⁴ Due to the commercially sensitive nature of Interim Supply Offers the Authority will not be publishing these in full or providing extensive detail as to their content.

Criteria: A Licensee must provide details of how they will manage their existing customers alongside Affected Customers.

Despite different answers being given as to how this would be undertaken, we considered that both Offerors provided an answer that was clear, comprehensive and convincing, and met the criteria. The answers given enabled us to understand how the increase in customers would be managed effectively and without detriment to their existing customers.

- 3.2. We asked Offerors to provide details of the arrangements they will make to manage the change of supplier.

Rationale: Licensees must be able to bring Affected Customers onto its own systems promptly in order to minimise disruption to them and other Trading Parties. In certain circumstances, it may be appropriate for Licensees to address the loss of credit balances (e.g. through applying a credit to the Affected Customer's account) in order to ensure that Affected Customers are not unduly affected.

Criteria: We will assess the issues that the Eligible Licensee would face in processing the Affected Customers. In particular, we will assess the Licensee's ability to assimilate customer information and issue bills without undue delay. Further, we will consider the Eligible Licensee's proposals in respect to Affected Customer's credit balances with strong preference given to those Eligible Licensees that agree to honour these balances.

In accordance with the criteria, we assessed the responses from the Offerors. There was a difference in the detail provided in relation to the estimated length of time it would take to onboard Affected Customers. The successful Offeror provided an answer that was clear, comprehensive and convincing, setting out a timescale that we considered to be achievable. The unsuccessful Offeror's answer was not as strong, and having sought clarification, it confirmed that its on-boarding process would take longer.

We asked Offerors how they would inform Affected Customers about what had happened, and how they would deal with any written and telephone enquiries. Having assessed the responses, neither Offeror considered the need for bespoke treatment for Affected Customers who may have lost pre-payments. However, the successful Offeror provided a more thorough answer to this part of the question, confirming how Affected Customers would be able to contact them with queries. The unsuccessful Offeror did not provide a direct response to this part of the question.

We asked Offerors to tell us how they would ensure that Affected Customers would receive timely and accurate bills. The successful Offeror provided an answer that was clear, comprehensive and convincing, confirming that they would swiftly be able to get Affected Customers into their meter schedule, with bills then issued based on these reads. The unsuccessful Offeror did not provide the same level of detail in its answer, although it did demonstrate that it had considered what processes and procedures it would need to have in place to enable timely and accurate billing of Affected Customers.

Offerors were asked to demonstrate how they would make Affected Customers aware of their options to sign up to a contract with the Eligible Licensee or switch to an alternative provider. They were also asked whether they would be willing to honour any pre-payments made by Affected Customers to the Previous Licensee. Both Offerors provided the same standard of response to this question, explaining how they would make Affected Customers aware of their options. No preference was given to either Offeror as neither were willing to honour pre-payments made by Affected Customers.

- 3.3. We asked Offerors how they intended to finance the additional costs to the business.

Rationale: Taking on additional customers should not have a negative impact on the Licensee finances.

Criteria: The Licensee should demonstrate that it has sufficient financial resources to finance its obligations under the law.

Both Offerors provided an answer that was clear, comprehensive and convincing. Despite a difference in answers received, both demonstrated that they were able to meet the criteria, and had sufficient financial resources to take on the Affected Customers.

- 3.4. We asked Offerors to confirm that they would be able to provide trade effluent services

Rationale: Affected Customers must have a continuity of service, which includes the bespoke services that they require to operate their businesses.

Criteria: Preference will be given to those Licensees who confirm that they are able to provide the relevant bespoke services.

Both Offerors provided an answer that was clear, comprehensive and convincing, confirming that they already provide trade effluent services to their

existing customers and were able to provide these services to Affected Customers.

COMPLIANCE

- 3.5. Offerors were asked to provide details of any charges that have been received as a result of underperformance against market performance standard measures as detailed in the Wholesale Retail Code in the last 12 months.

Rationale: These charges are levied against the MPS and give an indication of the Licensee's market performance. Achieving desirable market behaviours may impact the level of service that will be provided to a Licensee's customers.

Criteria: We will take into account the level of MPS charges of each Licensee. Where charges have been imposed on all Licensees, the level of those charges, mitigating factors and how the Licensee is addressing the issues that resulted in the MPS charges will be taken into account.

Both Offerors answered this question as requested. However, it has not been possible to directly compare the data received, and the question has therefore been excluded from our assessment.

- 3.6. Offerors were asked to provide details of any defaulting trading party classifications or termination notices received in accordance with the Wholesale Retail Code in the last 12 months.

Rationale: Affected Customers require stability following an interim supply event, and a failure to comply with the payment terms of the Wholesale Contract does not lend itself to this.

Criteria: In reaching our decision, we will take into account whether Licensees have been classed as a Defaulting Trading Party or received a notice(s) of intention to terminate in accordance with Part E: Default and Termination of the Business Terms of the Wholesale Retail Code within the last 12 months. Any mitigating circumstances provided will also be taken into account.

Both Offerors responses were clear, comprehensive and convincing, confirming that they had not been classed as a defaulting trading party or received a termination notice in the last 12 months.

- 3.7. Offerors were asked to provide the number of customers they had for the months July to December 2019, and the number of complaints they had in each of these months.

Rationale: The number of complaints received by a Licensee can be indicative of the level of service being provided to customers/customer satisfaction.

Criteria: Preference will be given to those Licensees with lower levels of complaints per number of customers.

The successful Offeror had a low number of new complaints per customer in the timeframe specified. However, because the unsuccessful Offeror had no new complaints within this timeframe, this was considered a stronger answer.

DETAILS OF CONDITIONS OF TRANSFERS

- 3.8. Offerors were asked to provide their Schemes that Allocated Customers would be placed on, and confirm if they intended to make any modifications to these Schemes to make special provision for sensitive customers and/or microbusinesses.

Rationale: Licensees are required to submit their Scheme. We expect a Licensee's Scheme to be legally accurate, compliant with the Code and the Retail Exit Code that comes into effect on 1 April 2020 and detailed enough to provide relevant information needed by Affected Customers in one place. Affected Customers should be able to establish the basis on which they are receiving relevant services easily.

Criteria: Preference will be given to those Licensees who provide Schemes that Ofwat considers will be easily accessible to Affected Customers and makes particular modifications to make special provisions for sensitive customers, for example schools or micro-businesses.

The Offerors provided Schemes of a similar standard. Neither Offeror made any modifications to existing Schemes to make special provision for sensitive customers or microbusinesses.

- 3.9. Offerors were asked to confirm the price terms that would be applicable to Affected Customers, for example if the changes would be equal to the default tariff or if a discount would be offered.

Rationale: We understand that the Eligible Licensee may not have information about the price terms that Affected Customers had agreed with the Previous Licensee and may be transferred on to default tariffs. However, Eligible Licensees should be offering a reasonable price for the service(s) they will be required to

provide at short notice, whilst adhering to their obligations under the Retail Exit Code.

Criteria: Preference will be given to Eligible Licensees who are able to provide a discount on default tariffs.

The successful Offeror confirmed that it will charge the default tariff. The unsuccessful Offeror has a different charging mechanism in that it charges a fixed management fee on top of the wholesale charge. Although it indicated that some Affected Customers may receive a discount on the default tariff, it was not able to confirm that there would not be an increase on the default tariff for other Affected Customers.

- 3.10. Offerors were asked to provide the latest version of their Statement of Interim Supply Capacity.

Rationale: Eligible Licensees must submit their latest version of the Statement of Interim Supply Capacity which demonstrates that it will be able to provide the relevant services to the requisite number of Affected Customers.

Criteria: Eligible Licensees must have capacity to provide the relevant services to the requisite number of Affected Customers.

Both Offerors provided a Statement of Interim Supply Capacity that they operate in South West Water's Area, and can accommodate the Interim Duty Supply Points for the requisite Service Categories.

- 3.11. **Overall conclusion**

The successful Offeror is Pennon Water Services Limited ('**Pennon**').

As demonstrated above, both of the Offers received were largely of an equivalent standard in many respects. However in this instance the swift on-boarding of Affected Customers that minimises any potential disruption to their retail services, and assurance that charges would not be more than the default tariff, meant that Pennon's offer was assessed to be the preferred offer.

These Affected Customers are active in the business retail market, having previously switched away from Pennon who is the acquiring licensee in the South West Water Area. The interim supply process is designed to deal with a scenario where there has been a disorderly exit by the Previous Licensee and seeks primarily to protect the interests of those Affected Customers. Although

Affected Customers will be placed onto Pennon's Scheme initially, they will be free to negotiate a revised contract with Pennon, or switch to another Licensee. As active customers we would expect the Affected customers to engage in the market and compare deals before entering into a new contract. If Affected Customers choose to switch within three months of 30 January 2020, they will be treated as if they switched directly to their selected Licensee, instead of being Allocated to Pennon via the interim supply process.

4. ALLOCATION DECISION

- 4.1. The Authority sought Interim Supply Offers from Eligible Licensees which had capacity to provide Interim Supply to all the Relevant Premises.
- 4.2. Two Eligible Licensees made Interim Supply Offers.
- 4.3. The Authority has made directions pursuant to Section 63AC(3) and Section 110L(3) of the 1991 Act that it is to be the duty of Pennon Water Services Limited to continue the supply of water and the provision of sewerage services to the Relevant Premises.
- 4.4. The Interim Duty Supply Points Allocated to Pennon Water Services Limited are the Relevant Supply Points.
- 4.5. The Date of Relevant Cessation of Supply is 30 January 2020.

5. REGISTRATION OF THE RELEVANT SUPPLY POINTS

- 5.1 The Market Operator shall Register the Allocated Relevant Supply Points to Pennon Water Services Limited with effect from the Date of Relevant Cessation of Supply.
- 5.2 The Relevant Supply Points shall:
 - 5.2.1 include Supply Points Registered to the Previous Licensee at the Date of Relevant Cessation of Supply including those in the process of being Deregistered or Disconnected; and
 - 5.2.2 include New Supply Points in the process of being Registered to the Previous Licensee at the Date of Relevant Cessation of Supply; but
 - 5.2.3 not include Supply Points in the process of being Registered to an Incoming Retailer at the Date of Relevant Cessation of Supply.

**Signed on behalf of the Authority by
Georgina Mills, Director of Business Retail Market**

Georgina Mills

On behalf of the Water Services Regulation Authority

ANNEX 1 THE INTERIM SUPPLY PROCESS

1. Procedure for the Election of a Eligible Licensee and the procedure for the Suspension of Election

A Licensee that Elects to be an Eligible Licensee must do so in accordance with Section 4.1 of the Code.

This includes the submission of a notification to the Market Operator of the Area or Areas in relation to which the Licensee is Electing to be an Eligible Licensee and, in respect of each such Area, whether it is to be an Eligible Licensee in relation to Water Retail Services or Sewerage Retail Services or both.

Further, within a reasonable time of Electing to be an Eligible Licensee it shall also confirm to the Authority in writing the requirements in relation to the Scheme and provide a copy of its Statement of Interim Supply Capacity.

The Market Operator retains a List of Opted In Retailers by Area.

Following the issue of a Notice of Relevant Cessation of Supply (an '**RCS Notice**') an Eligible Licensee may choose to Suspend its Election until such time as all the Interim Duty Supply Points identified in a single Notice of Relevant Cessation of Supply have been Allocated. Section 4.4 of the Code sets out the procedure for this.

2. Circumstances in which the Authority's power of direction may be exercised

Section 5.1 of the Code confirms that the Authority shall only use its powers under Section 63AC and/or Section 110L of the 1991 Act where:

- (a) there has been a Relevant Cessation of Supply in relation to the Eligible Premises;
- (b) that Previous Licensee is not a Self-Supply Licensee; and
- (c) an Interim Duty Supply Point relating to the Eligible Premises has been Allocated to the Eligible Licensee in accordance with the Code.

3. Circumstances in which the Authority will issue a direction

The Authority may issue a direction to an Eligible Licensee providing that it is to be the duty of that licensee to continue the supply of water and/or the provision of sewerage services where:

- (a) the Previous Licensee ceases to provide the relevant services; and

- (b) the owner or occupier of premises has not informed the relevant water company (undertaker) that arrangements have been made for the continuation of the services or he intends that the provision of services should cease.

Where premises are in a retail exit area the Authority must give a direction.

4. How the Authority determines the Date of Relevant Cessation of Supply

Section 5.2 of the Code confirms that the Date of Relevant Cessation of Supply shall be:

- (a) the date on which the relevant Previous Licensee's Licence was (or will be) revoked, as set out in the relevant revocation notice issue by the Authority; or
- (b) the date on which a Wholesale Contract between the relevant Previous Licensee and a relevant undertaker was terminated.

5. The process for issuing the RCS Notice and any accompanying information

In accordance with Section 6.1 of the Code where the Authority intends to issue a direction to an Eligible Licensee it must issue an RCS Notice to each Eligible Licensee, each relevant undertaker in whose Area there is an Interim Duty Supply Point, and the Market Operator. The RCS Notice includes the identity of the Previous Licensee, the Date of Relevant Cessation of Supply and the Suspension Deadline for the specified Relevant Cessation of Supply.

Further information that should be provided to recipients of the RCS Notice includes the Areas in which the Relevant Cessation of Supply has occurred and the number of Interim Duty Supply Points of each Service Category in each Area affected. The Authority may provide additional information, including the number of Interim Duty Supply Points in each Area which receive Trade Effluent Services.

6. Circumstances in which the Authority may decide to Allocate Interim Duty Supply Points

Section 7.1 of the Code sets out four options for the Allocation of Interim Duty Supply Points. These include via Interim Supply Offers or the Interim Supplier Allocation Process under the Wholesale Retail Code.

The Interim Supply Offers process set out at Section 7.2 of the Code enables the Authority to request Interim Supply Offers from Eligible Licensees. The

purpose of seeking Interim Supply Offers in respect of a relevant Area or combination of relevant Areas (as applicable) shall be to Allocate all of the Interim Duty Supply Points within such an Area or combination of Areas to a single Eligible Licensee. Having invited Eligible Licensees to make an Interim Supply Offer, the Authority is required to consider all of the Interim Supply Offers received, Allocate all of the Interim Duty Supply Points within each relevant Area or each combination of Areas (as applicable) to a single Eligible Licensee on the terms set out in the Interim Supply Offer submitted, and issue a direction in accordance with the 1991 Act.

The Interim Supplier Allocation process set out at Section 7.3 of the Code requires Interim Duty Supply Points to be Allocated by the Market Operator in accordance with the Wholesale Retail Code.

7. Allocation of Interim Duty Supply Points

Section 7.4 of the Code confirms that once the Interim Duty Supply Points have been Allocated to one or more Eligible Licensee, the Authority will inform those Eligible Licensees of the outcome. It will publish the Directions under section 63AC and 110L of the 1991 Act and an Allocation Notice which together legally transfers the Interim Duty Supply Points to the selected Eligible Licensee(s) (the Interim Licensee(s)) and sets out its reasons for Allocation. Having received direction from the Authority, the Market Operator will register the Interim Duty Supply Points to the Interim Licensee(s) with effect from the Date of Relevant Cessation of Supply. Where the Interim Supply Offers method is used, feedback on offers received will be provided on a confidential basis to Eligible Licensees.

8. Provision of Information to Affected Customers

Section 9 of the Code confirms that the Interim Licensee(s) must provide specified information to Affected Customers following the Allocation of the Interim Duty Supply Points.