

Proposal to grant an appointment to ESP Water Limited to allow it to provide water services to Halifax Road, Penistone

	Details
Applicant	ESP Water Limited (“ ESP Water ”)
Site Details	Halifax Road, Penistone, S36 7EY (“ the Site ”)
Services	Water Only
Current water appointee	Water Appointee: Yorkshire Water Services Limited (“ Yorkshire Water ”)
Proposed supply arrangements	Bulk supply agreement with Yorkshire Water
Criterion	Unserved
Household Customer	400
Business Customers	0
Developer	BDW Trading Limited
Estimated Site completion date	06/2026
Summary of consultation	A statutory consultation made under section 8(3) of the Water Industry Act 1991 (“ WIA91 ”) to grant ESP Water an appointment to allow it to provide water services to the Site. To also vary the appointment of Yorkshire Water as a water company. Consequently, ESP Water will become the water company for the Site.
Deadline for submissions	Representations or objections to this consultation should be sent by email to Licensing@ofwat.gov.uk or in writing and sent to the NAV licensing team, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA. Reponses must be received by Ofwat no later than 17.00 hours on 22 August 2022 .

Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at <http://www.ofwat.gov.uk/foi/>.

Ofwat will only use the information you have provided for the purpose of this consultation. We will retain your information in accordance with Ofwat’s retention schedule and will not share with third parties unless we have a legal obligation to do so. For further information please see Ofwat’s Privacy Policy in our [Publication Scheme](#).

1. Our assessment of this application

Our approach

The new appointment and variation ("**NAVs**") mechanism set out in primary legislation¹, provides an opportunity for entry and expansion into the water and sewerage sectors by allowing one company to replace the existing appointee as the provider of water and/or sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing appointees to expand their businesses.

You can find further details of our approach to assessing applications for NAVs [here](#).

2. ESP Water

ESP Water was set up in April 2021 by ESP Utilities Group ("**ESP Utilities**") to operate in the NAV market. ESP Water is a wholly owned subsidiary of ESP Utilities. ESP Utilities owns companies that operate in other utility markets, such as gas and electricity, with over 650,000 customers connected on a variety of networks.

ESP Water intends to operate as an undertaker providing water and sewerage services to household customers. ESP Water will offer water only or water and sewerage services to household customers, as part of a multi utility offering. ESP Water will enter into bulk supply and discharge agreements with incumbent companies and does not plan to use its own resources. ESP Water does not have any acquisition plans; it plans to grow organically via its existing contacts. Self-Lay Providers ("**SLPs**") will construct the networks on site and ESP Water will not undertake installation work but will acquire completed connections.

ESP Water has not previously operated in the sector, and ESP's first application is for a site in United Utilities Water Limited's area, Merchant's Wharf, the consultation document for this site can be viewed [here](#).

¹ The legal framework for new appointments is set out in the WIA91. Section 7 of the WIA91 sets out the criteria by which an appointment or variation may be made. Section 8 sets out the procedure for making that appointment or variation.

ESP Water has applied to provide water and sewerage or water only services to ten other sites, we are currently processing the assessment for each site, and we will consult on these accordingly.

3. The proposal

Ofwat proposes to:

- grant a new appointment to ESP Water as a water company, by including the Site in its water supply area: and
- vary the appointment of Yorkshire Water as a water company by excluding the Site from its water supply area.

By means of the above, if we grant the appointment to ESP Water, it will become the water services provider for the Site.

ESP Water has notified Ofwat, the Market Operator for the business retail market in England ("**MOSL**") and the Department for Food, the Environment and Rural Affairs ("**Defra**"), of its intention to exit the business retail market, should it be granted an appointment. ESP Water intends to operate as a wholesaler and retailer for household customers and wholesaler for business customers.

As such, ESP Water has entered into a subcontracted arrangement with Castle Water Limited ("**Castle Water**"), whereby Castle Water will serve its business customers until it exits the market. We have reviewed ESP Water's intended arrangement with Castle Water and found that this interim arrangement will not impact ESP's business customers. If this appointment is granted, ESP Water's business customers will be added to Castle Water's billing system as new customers and all customer and billing services will be handled by Castle Water.

Once ESP Water exits the market its business customers will have a choice to remain with Castle Water or move to another retailer of their choice. ESP's business customers can also choose to move to another retailer before it exits the market.

Both Defra and MOSL have not raised any queries or concerns in respect of ESP Water's proposed arrangement with Castle Water, in relation to its business customers, as such, we are processing ESP Water's appointment with this in mind.

ESP Water can only apply to exit the business retail market once it has been granted an appointment to provide water and sewerage services. Applications to exit the business retail market are processed by Defra. The Secretary of State, in accordance with regulation 11 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, grants permission for an undertaker to exit from the business retail market.

Unserved status of the Site

To qualify under the unserved criterion, an applicant must show that at the time the appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee.

Yorkshire Water has provided a letter dated, 17 January 2022, confirming that in its view the Site is unserved for water. Aerial maps show that the Site is greenfield but there are no existing buildings within the perimeter of the Site.

Given the information provided by ESP Water and Yorkshire Water, we are satisfied that the Site may be considered unserved.

Price

ESP Water proposes to match the charges to customers on the Site to those of Yorkshire Water, it will not offer a discount.

Levels of service

Every appointee is required under its licence conditions to publish and make available the Core Customer Information for its household customers. We have assessed ESP Water's proposed Customer Code of Practice, and our view is that it is of an appropriate standard. Our view is that customers on the Site would be no worse off in relation to the scope of ESP Water's proposed Customer Code of Practice than they would be Yorkshire Water were to be the customers' water company.

Stakeholder engagement

We take the view of the Environment Agency, the Consumer Council for Water and the Drinking Water Inspectorate into account before progressing to formal consultation on an application for a new appointment. The Environment Agency, the Consumer Council for Water and the Drinking Water Inspectorate informed us that they are content for us to consult on this application².

Impact on existing customers

² The Environment Agency and the Drinking Water Inspectorate will also be formally consulted on the proposals, as they are on the list of organisations which must be formally consulted as set out in section 8(4)(b) of WIA91.

In considering whether customers will be no worse off, we also considered the potential effects of this appointment on the prices that Yorkshire Water's existing customer base may face. The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect. It is therefore necessary to use a simplified set of figures. We have expressed the effect in 'per bill' terms to try to quantify the possible effect in an easily understandable way.

We have assessed the potential magnitude of this impact by comparing how much Yorkshire Water might have expected to receive in revenue from serving the Site directly, were it to serve the Site, with the revenues it might expect from the proposed arrangement with ESP Water.

We estimate a potential £0.01 increase on the annual water bills of existing Yorkshire Water customers if we grant this appointment to ESP Water. This is once the Site is fully built out.

This estimate does not take into account the potential spill-over benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win sites.

Therefore, we consider that granting this appointment to ESP Water would have small financial impact on customers' bills and could have potential benefits for customers.

Ability to finance and properly carry out its functions

We have a statutory duty to ensure that efficient appointees can finance the proper carrying out of their functions. When a company applies for a new appointment or variation, it must satisfy us that it is able to carry out all of the duties and obligations associated with being an appointed water or sewerage company. We specifically look at the operational and financial viability of the company.

Our assessment of operational viability requires the company to demonstrate to us that it is technically and operationally able to fulfil the duties of an undertaker. The key considerations we look at are listed in our published guidance [here](#), in section 5.7 (page 40).

ESP Water has provided sufficient evidence to demonstrate that it has the necessary processes and expertise in place to be able to comply with its obligations as a water and sewerage undertaker. In addition to its arrangement with Castle Water for business customers, ESP Water has several other subcontracted arrangements in place with other water and sewerage companies and third-party providers. ESP Water intends to rely on these arrangements and support from incumbent companies to be able to perform its statutory and regulatory duties. These arrangements cover provisions such as emergency mains repairs and the supply of bottled water. ESP Water has provided information on its assessment

process of appointing subcontractors, how the arrangement will work in practice and the contingency plans it has in place should arrangements not work as intended. Further, ESP Water has provided details of the assurance processes it has in place to ensure any infrastructure or assets it adopts meets the industry standard required.

Having reviewed the above, we are satisfied that it has the necessary operational viability to perform the duties of an undertaker.

We also have considered the financial position of ESP Water in relation to providing water services to the Site, and we are satisfied the company demonstrates sufficient financial viability.

ESP Water has a draft unlimited Keepwell Agreement with its parent company, ESP Utilities. ESP Water have confirmed that this agreement will be finalised and will cover this proposed new Site. ESP Utilities holds an investment grade credit rating with Moody's.

On this basis, we are currently satisfied that ESP Water would be able to finance its functions if the appointment is granted. The granting of the appointment is dependent upon receipt and review of a finalised Keepwell Agreement between ESP Water and ESP Utilities.

Risks identified in our assessment

In carrying out our assessment of this application we have noted that ESP Water intends to use subcontracted arrangements to operate its sites; Ofwat has considered whether this could impact on ESP Water's ability to perform its functions.

ESP Water has provided assurances regarding the processes for assessing subcontractors prior to its appointment being granted along with its contingency plans should any of these arrangements come to an end.

On balance we note that subcontracted arrangements are common amongst other NAV companies, and this in itself does not necessarily indicate ESP Water would be unable to perform its functions. If any issues were to arise with subcontractors, we expect ESP Water to have mitigations in place to eliminate or minimise any impact on customers.

We have considered the financial position of ESP Water in relation to providing water services to the Site, and we are satisfied the company demonstrates sufficient financial viability. We have also noted that ESP Water intends to grow quickly as a business, and we will continue to monitor its arrangements for financial security as it grows.

4. Conclusion and next steps

In assessing ESP Water's application, we have considered the general benefits of new appointments and variations. Our view is that our two key policy principles would be met in this case, as customers would be no worse off, and ESP Water would be able to finance, and carry out, its functions. We have also considered the effects of granting the proposed appointment on the existing customers of Yorkshire water.

We are currently minded to grant the appointment under the unserved criterion. Subject to considering any representations submitted during the consultation period in response to this consultation notice, Ofwat will decide whether or not to grant the appointment set out above.

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5. Site maps

