



Independent Networks
Association

Charging Team
Ofwat
Centre City Tower
7 Hill Street
Birmingham, B5 4UA

Email: charging@ofwat.gov.uk

29 June 2023

Dear Jonathan,

Ofwat consultation on changes to its NAV policy and assessment guidance

I am writing to you on behalf of the independent Water Networks Association (INA), in response to Ofwat's June 2023 consultation regarding proposed [changes to our NAV policy and assessment guidance](#). I can confirm that this response is not confidential.

The INA represents the UK's Independent Network Operators which play a vital role in heating and energising homes and businesses, as well as providing water and wastewater services. Our members have delivered significant improvements in competition, choice and service for customers in the utility market and, together, own and operate utility infrastructure and networks that provide energy, heat, power, water and wastewater to over 4 million households and thousands of businesses right across the UK.

While the competitive market for last mile networks in water and wastewater, is relatively less mature than in energy, our members' experience to date has demonstrated the significant potential for further development of the NAV sector to deliver more substantial and wide-ranging benefits to customers and developers alike. The 2022 CEPA assessment of the ['Benefits of independent network competition in the water and wastewater sector'](#) explored these issues and provides an overview of the industry improvements facilitated by the NAV market and the scope for further benefits to be delivered in the future.

The context surrounding the proposed changes to Ofwat's NAV policy

As you will be aware, the issue of NAV licencing and the underpinning processes that support these provisions is an area that we have raised concerns about in the past. We think the extended 85-working-day timeframe for the receipt of a NAV licence places us at a competitive disadvantage compared to incumbent water and wastewater companies (who



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do not have to go through this process when appointed to connect properties to water or wastewater infrastructure).

Having said that, we have been encouraged by our more recent engagement with Ofwat on this issue and very much welcome the openness Ofwat has demonstrated in considering ways in which the current process could be streamlined. In this respect, we note (and are in the process of exploring) the proposal that Ofwat put forward about the potential to make greater use of the 'consent' route for NAV applications. We recognise that this represents a shift in mindset in terms of the approach that Ofwat has traditionally taken to NAV licensing and a willingness to consider alternative approaches that could reduce the resource burden that both Ofwat and NAVs face as a result of the current process. We look forward to continuing these open and constructive discussions with the Ofwat team in the coming months.

Publication of a new SPS by Welsh Government

We were disappointed to see publication of the Ofwat consultation regarding its proposed changes to NAV policy and the associated assessment guidance. We had been unaware that Welsh government had published a new [Strategic Priorities and Objectives statement \(SPS\)](#) which was issued to Ofwat in late 2022. We note that this may be because we were not formally consulted on the change as it appears that responses were only invited from 'key' parties. We were further disappointed to learn of the contents of the SPS, particularly the inclusion of statements explicitly specifying that "the promotion of...competition in...water...is not a priority" and that "further promotion of competition is undesirable".

While we recognise, and respect, the powers delegated to the Welsh government as a devolved administration, we perceive statements such as those in the new SPS to be misaligned to the provisions of the Water Industry Act 1991, particularly the following sections.

- Section 2, paragraph 2A requires Ofwat to "perform [its]...duties...to further the consumer objective", which is defined in paragraph 2B as being "to protect the interests of consumers, wherever appropriate by promoting effective competition".
- Section 2B, paragraph 1 provides for "Welsh ministers...to publish a[n SPS]" and paragraph 3 states that in "formulating a statement...Welsh Ministers...must have regard to the duties imposed on [Ofwat in] section 2".

We also note that statements such as this are in direct contrast to the approach that Defra took in its revised [Strategic Policy Statement \(SPS\)](#), which was issued to Ofwat back in February 2022. In this document, Defra explicitly expects Ofwat to "support the



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development of the NAV market, to realise the potential of the market to deliver value for customers, society and the environment”.

INA views on the proposed changes to Ofwat’s NAV policy

We are fully aware of the way that the hierarchy of regulation operates, and that Ofwat is required to act in accordance with the Welsh Government SPS when carrying out relevant functions relating wholly or mainly to Wales. However, we note that Ofwat has a degree of discretion in its approach to implementing supporting provisions. In this respect, we see that Ofwat has taken a relatively stringent interpretation of the provisions contained within the new Welsh Government SPS, and this stands in stark contrast to their interpretation of the English SPS received from Defra. We consider this interpretation to be relatively stringent for the following reasons.

- The respective SPS documents published by the Welsh Government and Defra are both organised around a series of expectations that each authority specifies Ofwat should meet in carrying out its duties. Where they specify an expectation, accepted practice suggests this should be prefaced by the words “we expect...”. We note that the statements made by Welsh Government, with respect to competition in water and wastewater markets, in its new SPS were not preceded by a reference to these words, implying that the authority does not explicitly require action in this area.
- The SPS specifies that “the Welsh Government does not support the introduction of competition...where it cannot clearly be evidenced that it would be beneficial to customers”. Our views align with the sentiment of this statement, and we strongly believe that, before making any industry change, it should be clear that benefits outweigh the associated cost and, in particular, that advantages will ultimately accrue to customers. However, we note that the draft wording in the Ofwat proposals refers specifically to a requirement on NAVs, when submitting a licence application for sites located wholly or mainly in Wales, to “set out how the end customers and/or environment would benefit as a result of the applicant serving the site rather than the existing incumbent”. Adopting an even stricter interpretation of the statements made by the Welsh Government in the SPS further reduces the opportunities NAVs will have to cite relevant benefits. It also ignores the significant benefits that NAVs consistently deliver to our developer customers and the indirect benefits that result when incumbent water and wastewater companies are incentivised to improve their performance in order to secure new opportunities.

As outlined above, we note the discussions that have been ongoing for many years between Ofwat and the NAV community regarding our concerns around the NAV licencing regime as well as the approach that incumbents have taken to and their attitude toward compliance with the Bulk Supply charging guidelines. In both instances, the prevailing arrangements



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that remain in place, effectively constrain our ability to compete against incumbent water and wastewater companies that are not subject to equivalent provisions. In addition to the competitive disadvantage these arrangements create, the NAV licensing process also imposes a significant resource burden and, as our businesses grow and NAVs become an established part of the water industry, we feel the approach is becoming increasingly disproportionate. As set out above, we very much welcome the efforts that Ofwat is making to seek to improve the current NAV licensing and bulk supply arrangements via open discussions and collaborative working with the NAV community but feel that the proposals set out in this consultation are in direct conflict with the intent of this collaborative work.

The proposed extension of the policy approach to England

In addition to the proposed implementation of changes to Ofwat's NAV policy for sites based solely or mainly in Wales, the consultation seeks interested stakeholder views on the value of extending this proposal to NAV licence applications for sites in England. In line with the comments above, we strongly believe that before making any industry change, it should be clear that benefits outweigh the associated cost and that advantages will ultimately accrue to customers. Our views on the need to attain clarity on customer benefits before implementing an industry change apply equally in the context of NAV licensing. In this respect, we are confident that when Ofwat decides to award a licence to a NAV for a new site, this will lead to customer and developer benefits. Indeed, the 2022 CEPA assessment, referenced above, presented an independent view of the range and scope of customer benefits that have accrued because of NAV competition. Having said that, we note that the prevailing NAV bulk supply and licensing arrangements already constrain our members' ability to compete against incumbent water and wastewater companies, and we anticipate that these proposals would further skew the playing field away from NAVs.

As referenced previously, we note that the revised Defra SPS, published in February 2022, contained clear expectations from the government regarding the work that Ofwat should be progressing to "support the development of the NAV market". While we recognise the endeavours that Ofwat is taking forward in the form of the bulk supply working group (BSWG) and the most recent discussions on the NAV licensing process (referenced above), we note that neither of these initiatives has yet to culminate in a suite of formal proposals. We acknowledge that the focus of these initiatives is targeted toward the key issues that concern us as a NAV community but note the disproportionately slow progress that has been made, particularly in terms of the BSWG, which has been discussing the key issues for more than two years. This is especially of note, given that discussions on NAV bulk supply provisions have been under ongoing open review since October 2017, when Ofwat commissioned Frontier Economics to complete [a study of the market for NAVs](#). Ofwat's approach in these areas appears in direct contrast with the approach it has taken toward the implementation of arrangements to support the provisions of the new Welsh



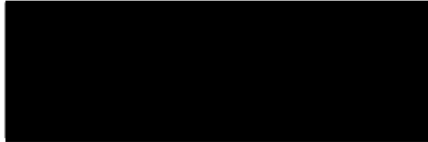
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government SPS; where a consultation document and suite of supporting proposals has been developed and published in less than six months.

We think it would be proportionate for Ofwat to explicitly commit to the establishment of a programme of work, including timeframes, that will secure effective delivery in line with the expectations set out by Defra in its SPS. We believe that this commitment should be provided prior to placing any further limitations on the ability of NAVs to compete fairly against incumbent water and wastewater companies.

I hope that this letter is helpful. If you have any questions on any of the issues I have raised or would like to discuss these in more detail, please feel free to get in touch. We have also copied this letter to David Black, Emma Kelso, Emily Bulman and Phil Hand for visibility.

Yours sincerely,



Keith Hutton
Chair of the INA Water Sub-Committee