Response to the Environment Agency
Charge proposals from April 2018
29 January 2018

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK’s energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests £12bn annually, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HM Treasury.

We welcome the opportunity to contribute to the Environment Agency’s (EA) consultation on charge proposals from April 2018. We agree in principle with the introduction of more cost-reflective charges where operators pay for the service they receive, however we have a number of fundamental concerns with the proposals, particularly around transparency and consistency, and as such we are unable to support the proposals as they currently stand without further clarification.

The EA recognises that these changes are significant and most existing charge payers will see a change in their bill; some will see substantial changes. Energy UK is of the opinion there is insufficient information on some of the key aspects of the proposed charges, most notably on the calculation of baseline fees and the open-endedness of fees for time and materials. With only two months remaining before the proposed implementation of the new charges, we are concerned that there is limited time for the EA to collate and respond to the consultation responses and put in place the new charging scheme.

This timing is significant given the impending Regulation 61 notices that will be shortly issued by the EA to the combustion sector to implement the revised Large Combustion Plant BREF; operators need certainty over the cost of the re-permitting exercise that they are just about to undertake.

Given the extent of the changes and the insufficient clarity on some key parts of these proposals, we suggest that the EA delays the introduction of the fees for 2018, to enable any concerns of consultees to be given due consideration and further consultation to be undertaken if required.

Our responses to the questions relevant to the combustion power sector are set out below.

Response to Consultation Questions

1. Do you agree with the proposals to charge fixed charges where we have greater certainty over costs and time and materials in other instances?

   We agree in principle with the introduction of more cost-reflective charges where operators pay for the service they receive, but we have a number of fundamental concerns with the proposals, particularly around transparency and consistency, and as such we are unable to support the
proposals as they stand. We have raised these concerns separately through the EA’s Combustion Sector Group and we also set them out below. Should these concerns be addressed satisfactorily, then we believe we would be able to support the revised proposals going forward.

Transparency

It is vital that any proposal to charge fixed annual subsistence and application charges and to charge on the basis of time and materials in other instances is fully transparent. In a number of areas, it is not clear what is, or is not, included within the proposed charge categories (and therefore it is not possible to ascertain the applicable baseline charge) or what level of service is to be provided under the proposed baseline charges. As a consequence of this, it is difficult to provide meaningful comment and we have set out below a number of areas where further clarification is required in order to improve the transparency of the proposed charges.

Multiple Associated Activities

It is unclear from the draft charging schedule (Tables 1.10 and 2.10 respectively) what is captured within each of the application and subsistence charge categories for the Combustion and Power sector. In particular, where there are multiple activities carried out at an installation, such as cooling water discharges, effluent discharge, flue-gas desulphurisation, etc., which have separate tables within the schedule, it is not clear under what scenarios these charges are added together to create the overall charge for an installation. Section 4.7 of the consultation paper outlines the “sum of all charges” rule but does not refer specifically to the Combustion and Power sector.

From industry discussion with EA staff on this point, we understand that the charges listed in other tables relating to such associated activities (and in particular Part 2.3 – Water discharges and groundwater activities and Part 2.4 – Chemicals) would not be added to the charge listed in Table 2.10 but would only apply where it is a standalone activity. That is, the charges listed in Table 2.10 are the total baseline subsistence charges that a Combustion and Power installation would be subject to. Similarly, the charges listed in Table 1.10 for applying / varying a permit are the total baseline application charges that such an installation would be subject to, with no additions to the charge where the variation relates to a specific associated activity with a separate table in the schedule.

We also understand that power stations with Environmental Permitting Regulations (EPR) permits for discharging water would “face only one charge, as they do currently, where effluents are combined into one discharge”. We assume that the charge levied would be the ‘most apt’ charge, but we would appreciate clarification of the application of this principle. For example, where cooling water effluent with specified substances >50,000m³.d⁻¹ is combined with sewage effluent <500m³.d⁻¹, we assume that the ‘most apt’ charge would be for the much larger discharge.

The application of the charges in relation to Combustion and Power installations as discussed above needs to be clarified in both the draft charging schedule and guidance to avoid confusion to operators. To be clear, a coal station may have the following associated activities: cooling water discharge; effluent discharge; limestone gypsum flue-gas desulphurisation. We would not consider an approach where these activities are charged for on a separate and cumulative basis to be either reasonable or indeed fair to the Combustion and Power sector.

Similarly, we would not expect ash on a ‘landfill only serving a combustion plant’ (ref. 2.10.6 of the charging schedule) undergoing basic physical ‘treatment’ prior to export for re-use, to attract an additional subsistence charge. The basic ‘treatment’ simply involves separating the ash, is common to all ash landfills, and no additional regulatory effort is required by EA staff as a result of this process. In our view, therefore, such associated activities should be included within the baseline charge set out in ref. 2.10.6, with no additional charge levied. However, it is not clear if this activity
will attract an additional subsistence charge (as with landfills considered under Part 2.17) or not, and we would appreciate further clarification on this issue.

**Multiple Combustion and Power Activities on One Site**

We would appreciate clarification as to how the application/variation/subsistence charges will be calculated where there are two or more Combustion and Power activities carried out on one installation or site. We have outlined a number of examples below and stated our understanding of how the charges will be applied following discussion with EA staff. It is important that the scenarios below (and others that may apply) are explicitly clarified in the charging schedule and guidance to avoid confusion and mitigate the risk of different charges being applied to similar operators.

i. **A Black Start gas turbine on a coal installation**
   We understand that the Black Start unit would be included in the charge for a coal station as it is ancillary to the main activity (ref. 2.10.1).

ii. **Biomass units and coal units on one installation**
    We would appreciate clarification as to whether or not the charges for separate biomass units or co-firing units would be added together (ref. 2.10.1 + 2.10.2). The indicative view of the EA was that this would require extra regulatory scrutiny of processes. However, it must be noted that a number of coal installations have been co-firing biomass since 2002 and therefore operators consider that this should be included in the charge for a coal station.

iii. **A CCGT which comprises a gas turbine and a boiler**
    We understand that this would be subject to the main charge associated with the primary activity i.e. gas turbine only (ref. 2.10.3) as no additional regulatory effort would be required for the boiler.

iv. **Auxiliary boilers on a coal or gas installation**
    We understand that this would be subject to the main charge associated with the primary activity i.e. coal or gas station only (ref. 2.10.1 or 2.10.3 respectively) as the boilers are ancillary to the main activity.

v. **Multiple CCGTs, for example, on one site**
    We understand that only one charge for CCGT (ref. 2.10.3) would be applicable.

**Service to be Included in Baseline Charges**

It is also not clear from the paper what services are to be included in the fixed baseline subsistence charge i.e. number of hours, site visits, audits, etc. From industry discussion with EA staff, we understand that the intention is that any activity an inspector currently undertakes on a routine, planned basis year on year is to be included in the basic subsistence charge and that only unforeseen events will be charged for on a time and materials basis. However, in our view, the proposed level of service needs to be set out explicitly to avoid confusion and inconsistency over time.

**Allocation of Services Between Fixed / Time and Materials Charges**

Clearly, it is very important that the line between fixed baseline and time and materials charges is drawn in the correct place, that is, specific services provided by the EA are allocated to the correct category. If this is not the case, then the charging scheme will be biased and fundamentally flawed from the outset.

The consultation paper states that improvement conditions will not fall under the baseline subsistence charge but will be classed as 'non-planned compliance and associated regulatory work' and are therefore to be charged on a time and materials basis (section 4.6.1 of the consultation paper and section 3.1.6 of the draft guidance).
In the combustion sector to date, improvement conditions have had two purposes: to address sitelated poor performance / pollution incident; or (and in the main for the power sector) where the EA is undertaking generic work across the sector, to give effect to new legislation or to formally request information from all operators. Examples of the use of improvement conditions in the latter category include the Eels Regulations 2009, SOx improvement condition for coal stations under the Habitats Directive and Regulation 60 Information Notices. The former use of an improvement condition involves direct, inspector-led resource, while the latter involves indirect central EA resource.

In the latter case, the use of improvement conditions in the combustion sector is a clear example of a proactive, collaborative approach between industry and the EA to introduce positive and necessary improvements. If operators are to be charged on a time and materials basis in these instances, this would be a significant change to the status quo, which in our view would be detrimental to the established spirit of cooperation for both operators and the EA.

Notwithstanding the above however, we understand from recent discussions with the EA that the subsistence charge (both basic and time and materials) relates to 'direct' EA resources (i.e. inspector resource only) and that 'indirect' central resources are not included in the calculation of subsistence charges. We would very much welcome clarification on this point as, if indeed it is the case that 'indirect' central resource is not to be charged out on a time and materials basis, then there would be no detriment to the use of improvement conditions for policy change as outlined above.

Another example where we consider the allocation of services between fixed baseline charges and time and materials charges to be incorrect is the proposal to include only the most basic pre-application advice in the baseline application charge. This basic advice is described as advising as to the type of permit required, signposting to application forms and advising what accompanying documents should be submitted. Anything additional to this must be requested as part of the discretionary enhanced service to be charged on a time and materials basis.

While we are pleased that the consultation paper recognises the importance of providing good pre-application advice, we are concerned that such advice (other than the most basic as outlined above) is to be charged on a time and materials basis. The time-savings that can be realised as the result of a good pre-application discussion are significant, both for the operator and the regulator. The benefits outweigh the costs for all parties and in our experience an early exchange of views results in a more efficient determination process. If there is no provision for pre-application discussion (other than to pay for it on a time and materials basis), this could incentivise some operators to bypass any pre-application discussion leading to a more drawn-out, resource-intensive process for all.

We therefore consider that the basic pre-application advice included in the fixed application charge should include provision for 15 hours of discussion with EA staff, with any additional advice required over and above this charged out on a time and materials basis. As well as incentivising good regulatory practice, this would also be consistent with the current water abstraction charging regime.

**Invoicing**

If the EA implements its proposals to charge both on a fixed and time and materials basis for services, then it is absolutely vital that the invoices sent to operators are fully transparent. That is, operators need to know what service they are paying for. Each service and its charge (including the rate / number of hours, etc.) needs to be individually itemised on the invoice. This level of invoicing is, in our view, a pre-requisite of transparency; it is also vital for operators to fully understand their charges in order to consider whether they wish to challenge them.
Certainty

One of our fundamental concerns is the lack of certainty regarding the charges that an operator may incur when applying for a new permit or a permit variation. That is, once the charges move onto a time and materials basis, an operator is potentially facing unlimited cost with the only alternative being to abandon the project. While the paper states that the EA will inform an operator when it is to start charging on a time and materials basis, it is not clear if an indication will be given of the level of costs likely to be incurred through to conclusion or indeed whether such an indication would be final or could be increased again. Such uncertainty and risk at the outset would make it very difficult to budget effectively and increases the overall regulatory risk associated with a project.

We would therefore strongly urge the EA to consider ways to minimise the level of cost uncertainty for operators. One possibility would be to implement a cap on the time and materials element of charges for each activity. This would allow operators to budget for a worst-case scenario, which in turn would remove much of the uncertainty.

In addition, we consider that the EA must be subject to an explicit ‘test of reasonableness’ where the regulator is required to undertake its activities in as reasonable and pragmatic a manner as possible in order to minimise costs incurred. This ‘test of reasonableness’ should be backed up by a simple appeals process to allow operators to appeal the time and material costs element if necessary. The appeal process should also provide a means for operators to challenge the appropriateness of any new charges introduced by the EA over time in order to provide the correct level of checks and balances in the process.

2. Please tell us if you have any comments about the proposed transitional arrangements outlined in section 2.8.

We note that it is proposed to implement the new charges from 1 April 2018 and to review the charges after two and a half years. It has also been stated that performance banding will be introduced from April 2019.

However, given the significance of these charging proposals, and with only 2 months remaining until 1 April 2018, we are concerned that there is insufficient time for the EA to collate and respond to the consultation responses and put in place the new charging scheme, and for operators to accurately plan their budgets. Given the extent of our comments and concerns regarding the lack of clarity on some of the key parts of these proposals, we suggest that the EA delays the introduction of the fees for 2018, to enable any concerns of consultees to be given due consideration and further consultation to be undertaken if required.

If the EA intends to go ahead with the changes on the proposed timescale, we would strongly urge the EA to allow for an additional review early in the implementation phase to correct any errors and then allow transition time at least until the review period (September 2020) for the changes to bed in and to ensure that the EA is not materially over or under-recovering its costs, before looking to implement performance banding.

3. Please tell us if you have any comments about the common regulatory framework outlined in section 3.1.

The approach set out in this section refers to splitting the activities into those that form the baseline activity (i.e. predictable and consistent) and those which are supplementary (i.e. not always required or difficult to quantify and which would be charged for on a time and materials basis). It is clearly very important that the line between fixed baseline and time and materials charges is drawn in the correct place, that is, specific services provided by the EA are allocated to the correct category. If
this is not the case, then the charging scheme will be biased and fundamentally flawed from the outset.

Two specific examples where we believe the allocation of services between fixed baseline charges and time and materials charges should be reviewed are: the use of improvement conditions to implement policy change; and the service included in the baseline application charge. We have set out our concerns in relation to both these examples in response to Question 1 above and will not therefore repeat the points here. However, we would urge the EA to review the allocation of services between the two charge categories to ensure that the correct and appropriate incentives are retained in the regulatory regime going forward.

In addition, we note that Section 3.1 of the paper states that the EA will “reduce reliance on taxpayer funds currently needed to support our regulatory work”. With the Government’s proposed reductions in Grant in Aid, we would caution against the introduction of additional charges on operators to replace lost Grant in Aid funding for activities other than the regulation of installations in the power sector, as this would clearly not be appropriate and would effectively impose a stealth tax on operators.

4. We anticipate that there will be time saving for businesses if you no longer are required to complete an OPRA profile. Do you agree?

In the past, operators in the power sector have not found this a significant administrative task even when having to complete an OPRA profile as part of a new permit application. The annual review involves very little effort unless a substantial change is made to the plant. We therefore do not anticipate that there will be significantly time savings for businesses by removing the requirement to complete or review an OPRA profile.

5. How much time do you think will be saved by not having to complete an OPRA profile as part of a permit application? (in hours)

Approximately four hours.

6. Who usually completes the OPRA profile that is required when applying for a waste, installations or mining waste permit?

Manager, director or senior official, but that will vary according to company.

7. How much time do you think will be saved by not having to annually review your OPRA profile? (in hours, per year)

As high-performing operators, Energy UK members do not expect their OPRA profiles to change year on year, many of the tables require only a review and are fixed. As a result, we consider that very little time will be saved by not having to annually review OPRA profiles. This may be approximately 1 hour per site per year.

8. Who usually completes the annual review of your OPRA profile?

This will vary according to company.

9. Do you agree with the proposal to include only basic pre-application advice in all of our application charges?

We do not agree with the proposal to include only the most basic pre-application advice in the baseline charge. This basic advice is described as advising as to the type of permit required, signposting to application forms and advising what accompanying documents should be submitted.
Anything additional to this must be requested as part of the discretionary enhanced service charged on a time and materials basis.

While we are pleased that the EA recognises the importance of providing good pre-application advice, we are concerned that such advice (other than the most basic as outlined above) is to be charged on a time and materials basis. The time-savings that can be realised as the result of a good pre-application discussion are significant, both for the operator and the regulator. The benefits outweigh the costs for all parties and in our experience results in a more efficient determination process. If there is no provision for pre-application discussion (other than to pay for it on a time and materials basis), this could incentivise some operators to bypass any pre-application discussion leading to a more drawn-out, resource-intensive process for all.

We therefore consider that the basic pre-application advice included in the fixed application charge should include provision for 15 hours of discussion with EA staff, with any additional advice required over and above this charged out on a time and materials basis. As well as incentivising good regulatory practice, this would be consistent with the current water abstraction charging regime. It would also provide operators with clarity over when the clock stops for pre-application advice and when the clock starts for additional advice on a time and materials basis.

10. Do you agree with the proposal for a discretionary enhanced pre-application advice service?

Yes. While we consider it important for a reasonable level of pre-application discussion/advice to be provided in the basic pre-application advice included in the baseline application charge (as discussed in response to Question 9 above), we also consider it reasonable to introduce charges on a time and materials basis for potentially complex and specific topics in relation to a bespoke permit, such as those examples listed in Section 4.3.1 of the paper.

However, whilst operators are generally happy to pay in return for advice which is high quality, timely and unequivocal, our experience of other discretionary charging regimes has demonstrated that this is not always the case, and that projects may still be in a position where adequate advice is not provided at critical times. It is important that charges of £100/hour (equivalent to rates paid for expert environmental advice from consultants) relate to a defined and appropriate level of authority and expertise of EA staff resource. Furthermore, while it is clearly in the operator's interests to have the correct EA expertise in attendance at such discussions, there is also an obligation on the EA to ensure that staff are of a reasonable competency to hold such discussions (and are limited to those who are essential to the topic) without the need for, say, three or four people being required to attend (thus increasing the charge per hour significantly).

11. To recover our costs, we intend to charge each time we review a waste recovery plan. Do you agree with this approach?

Not applicable.

12. Do you agree with our proposal to retain a proportion of the fee to cover costs associated with processing poor applications?

While we agree with the proposal in principle to retain a proportion of the fee to cover costs associated with processing poor applications, we consider the 20% charge with a cap set at £1,500 to be quite high. That is, we are unclear whether the 20% is cost-reflective given that this is simply a tick-box exercise to check all the required information is included.

13. Do you agree with the proposals to recovering additional costs for determining public interest applications through time and materials?
While we agree in principle with the proposal to recover additional costs for determining public interest applications through time and materials, an unlimited charge could become very expensive for an operator. The uncertainty and risk of this unknown charge in the planning stages of a project would make it difficult to budget and could potentially undermine the economics of a project from the outset. Such an approach could also be exploited by some parties opposed to a particular project as a cynical and vexatious means of increasing the project costs.

We therefore request further detail on this process. The EA has processed several contentious applications and should therefore be in a position to provide an estimate with a cap on the maximum time and materials charge that could be levied in such instances. This would allow operators to budget for a worst-case scenario which would remove much of the uncertainty. In addition, by providing an estimate this would enable the operator to pay a fee enabling the permit to be determined without the need for delays at the end of the permitting process. If such an estimate is introduced, there should be a mechanism whereby the time taken by the EA is recorded and an adjustment made either way if the hours are less or greater than those first estimated.

Further, the EA should be subject to an explicit ‘test of reasonableness’ where it is required to undertake its activities in as reasonable and pragmatic a manner as possible in order to minimise costs incurred.

Also, we would welcome more detail on what does and does not constitute a “public interest application”. While some examples are obvious, e.g. a landfill or mining operation, others are less so, such as a CCGT. Further clarification on this point would be helpful to operators.

14. Do you agree with the fixed charge approach for application amendments during determination?

We agree with the fixed charge approach for application amendments during determination but only where such amendments trigger a requirement for additional public consultation and subject to the caveat that it is only significant changes to an application that would trigger such a requirement for further public consultation.

15. Do you agree with our proposal to recover costs of determining permits for novel activities through time and materials charging?

Yes. However, again we consider that this should be subject to some form of cap to prevent the charge from becoming excessive, as this could discourage or stifle innovation. We would also welcome more clarity on what is meant by novel activities. The consultation states that novel activities are those technologies, risk assessment models or approaches that have not been authorised before. However, just because an activity has not been authorised before, does not mean that the activity is novel or will require the EA to take a bespoke approach such that it should need to charge for time and materials. Instead we would suggest a definition of novel activities that refers to an independent and objective measure. We would also welcome more clarity on what actions are proposed when aspects of an activity are potentially novel, but the activity as a whole is not novel, for example, an innovative way to create electricity from natural gas is still electricity production.

16. Do you agree with our proposals to charge for further information requests not covered within the baseline charge?

No. We agree with the proposal to charge for further information requests when the EA needs to request the same information from an operator more than twice. However, the consultation paper states the following: “sometimes applicants’ responses appear to meet the requirements of the notice but still do not provide us with sufficient information to enable a permit to be issued and we
then have to issue a further notice on the same issue” and “a fixed charge of £1,200 for each notice relating to the same issue”.

There are two very different scenarios where a) an information request has to be re-issued to ask for the same information where the operator has not provided it and b) where an information request has to be issued on the same issue but is not requesting the same information but rather additional or more detailed information that the EA subsequently requires. That is, an operator will only answer the questions that the information request asks but often, in our experience, when the EA receives the response it realises that it requires additional information and therefore has to issue a further request. This was our experience with the Regulation 60 notices issued in 2015 for Industrial Emissions Directive (IED) permit variations whereby the EA did not really know what it wanted and we had several further requests often just to clarify the EA’s own thinking. It would clearly not be appropriate or reasonable to charge for an additional notice in such circumstances. It is therefore incumbent on the EA to ensure that information requests explicitly state the information that is required and that this charge is only levied where the operator has failed to provide the specific information requested.

In addition, if there is a justifiable reason for the operator not to provide the requested information, then no charge should be levied for an additional information request. Again, a right of appeal for operators to challenge the application of such a charge must be provided in the interests of a fair and balanced regime.

17. Do you agree with our proposal to use the new application fee as the basis for variation and surrender charges?

Yes.

18. Do you agree with our approach for discounting batch transfers to a single operator at the same time?

Yes.

19. Do you agree with the approach we have used to cover our costs associated with determining permits at multi-activity sites?

No. We are unclear what is meant in Section 4.4 of the consultation paper in relation to the Combustion and Power sector. It is unclear from the draft charging schedule Table 1.10 what is captured within each of the application charge categories for the Combustion and Power sector. In particular, where there are multiple associated activities carried out at an installation such as cooling water discharges, effluent discharge, flue-gas desulphurisation etc., which have separate tables within the schedule, it is not clear under what scenarios these charges are added together to create the overall application charge for an installation.

From industry discussion with EA staff on this point, we understand that the charges listed in other tables relating to such associated activities (and in particular Water discharges and groundwater activities and Chemicals) would not be added to the charge listed in Table 1.10 but would only apply where it is a standalone activity. That is, the charges listed in Table 1.10 are the total baseline application charges that a Combustion and Power installation would be subject to. However, if this is indeed the case, then the application charges in relation to Combustion and Power installations need to be clarified in both the draft charging schedule and guidance to avoid confusion to operators.

20. Please tell us if you have any comments about the approach to annual subsistence charging outlined in sections 4.5 and 4.6.
Please see our comments in response to Question 1 above.

21. Do you agree with our approach to charging for non-planned compliance work at permitted sites?

No. Section 4.6.1 of the consultation paper implies that improvement conditions will not fall under the baseline subsistence charge but will be classed as ‘non-planned compliance and associated regulatory work’ and are therefore to be charged on a time and materials basis. In the combustion sector to date, improvement conditions have had two purposes: to address site-related poor performance / pollution incident; or (and in the main) where the EA is undertaking generic work across the sector, to give effect to new legislation or to formally request information from all operators. Examples of the use of improvement conditions in the latter category include the Eels Regulations 2009, SOx improvement condition for coal stations under the Habitats Directive and Regulation 60 Information Notices. The former use of an improvement condition involves direct, inspector-led resource, while the latter involves indirect central EA resource.

In the latter case the use of improvement conditions in the combustion sector is a clear example of a proactive, collaborative approach between industry and the EA to introduce positive and necessary improvements. If operators are to be charged on a time and materials basis in these instances, this would be a significant change to the status quo, which in our view would be detrimental to the established spirit of cooperation for both operators and the EA.

Notwithstanding the above however, we understand from recent discussions with the EA that the subsistence charge (both basic and ‘time and materials’) relates to ‘direct’ EA resources (i.e. inspector resource only) and that ‘indirect’ central resources are not included in the calculation of subsistence charges. We would very much welcome clarification on this point as if indeed it is the case that ‘indirect’ central resource is not to be charged out on a time and materials basis, then there would be no detriment to the use of improvement conditions for policy change as outlined above.

22. Do you agree with the additional charge to cover extra regulation work in the first year of operation on an activity?

Yes. Such an approach would seem reasonable as additional EA resource is usually going to be required in the first year of operation of an activity.

23. Do you agree that this first-year charge should apply across all regimes and sectors under EPR or should it apply to some sectors only? (If so which sector/s?)

To ensure fairness and a level playing field it should apply to all regimes and sectors. It would be unfair to single out particular activities / sectors.

24. Do you agree with our approach to charging for pre-operational and pre-construction?

No. While it is clearly reasonable to waive baseline subsistence charges for the period during which neither construction nor operation has commenced, we do not consider that it is reasonable to start charging subsistence charges when construction begins. Our understanding has always been that the application fee covers the construction stage through to completion of a project with subsistence charges only being levied at the start of commissioning / operation. This is supported by the many projects involving engineering works which have no follow-on ‘operation’ as such and therefore no subsistence charges to pay (e.g. the construction of a power line, where the application fee covers the construction through to completion).
In addition, there may be instances where construction has started and then stops, for example due to a contractor issue, site issue or even a change in market conditions, at which point regulatory scrutiny of the site will cease and in turn any subsistence charges should similarly cease until such time as construction re-commences.

The paper carves out a specific exception for waste incinerators and co-incinerators where the EA proposes to charge a fixed pre-construction charge and full subsistence charges as soon as construction begins. While we accept the case for charging once construction has started due to the significant number of pre-operational conditions associated with such plant, we do not support the proposal to charge a fixed pre-construction charge. We do not consider that operators should pay such a fixed charge before construction has started as there is no regulatory effort required by the EA at this stage. In addition, such a charge would incentivise operators to delay applying for a permit as long as possible which would be contrary to the EA’s push to encourage operators to apply for permits earlier rather than later.

We are also concerned that no provision has been made for sites that have ceased operation for longer than 12 months. We have experience of several sites closing for regulatory or economic reasons; they are still expected to pay the full subsistence fee, yet see very little Regulator effort. We consider the EA should include a review of charges for installations that close for longer than 12 months.

25. Please tell us if you have any comments regarding our proposed arrangements to recover regulatory costs at multi-activity sites?

It is unclear from the draft charging schedule (Table 2.10) what is captured within each of the subsistence charge categories for the Combustion and Power sector. In particular, where there are multiple activities carried out at an installation such as cooling water discharges, effluent discharge, flue-gas desulphurisation etc., which have separate tables within the schedule, it is not clear under what scenarios these charges are added together to create the overall charge for an installation. Section 4.7 of the consultation paper outlines the “sum of all charges” rule but does not refer specifically to the Combustion and Power sector.

From industry discussion with EA staff on this point, we understand that the charges listed in other tables relating to such associated activities (and in particular Part 2.3 – Water discharges and groundwater activities and Part 2.4 – Chemicals) would not be added to the charge listed in Table 2.10 but would only apply where it is a standalone activity. That is, the charges listed in Table 2.10 are the total baseline subsistence charges that a Combustion and Power installation would be subject to.

The application of the charges in relation to a Combustion and Power installation as discussed above needs to be clarified in both the draft charging schedule and guidance to avoid confusion to operators. To be clear, a coal station may have the following associated activities: cooling water discharge; effluent discharge; limestone gypsum flue-gas desulphurisation. We would not consider an approach where these activities are charged for on a separate and cumulative basis to be either reasonable or indeed fair to the Combustion and Power sector.

Similarly, we would not expect ash on a ‘landfill only serving a combustion plant’ (ref. 2.10.6 of the charging schedule) undergoing basic physical ‘treatment’ prior to export for re-use, to attract an additional subsistence charge. The basic ‘treatment’ simply involves separating the ash, is common to all ash landfills, and no additional regulatory effort is required by EA staff as a result of this process. In our view, therefore, such associated activities should be included within the baseline charge set out in ref. 2.10.6 with no additional charge levied. However, it is not clear if this activity will attract an additional subsistence charge (as with landfills considered under Part 2.17) or not, and we would appreciate further clarification on this issue.
We would also appreciate clarification as to how the subsistence charges will be calculated where there are two or more Combustion and Power activities carried out on one site or installation. We have outlined a number of examples below and stated our understanding of how the charges will be applied following discussion with EA staff. It is important that the scenarios below (and others that may apply) are explicitly clarified in the charging schedule and guidance to avoid confusion and mitigate the risk of different charges being applied to similar operators.

i. **A Black Start gas turbine on a coal installation**
   We understand that the Black Start unit would be included in the charge for a coal station as it is ancillary to the main activity (ref. 2.10.1).

ii. **Biomass units and coal units on one installation**
    We would appreciate clarification as to whether or not the charges for separate biomass units or co-firing units would be added together (ref. 2.10.1 + 2.10.2). The indicative view of the EA was that this would require extra regulatory scrutiny of processes. However, it must be noted that a number of coal installations have been co-firing biomass since 2002 and therefore operators consider that this should be included in the charge for a coal station.

iii. **A CCGT which comprises a gas turbine and a boiler**
    We understand that this would be subject to the main charge associated with the primary activity i.e. gas turbine only (ref. 2.10.3) as no additional regulatory effort would be required for the boiler.

iv. **Auxiliary boilers on a coal or gas installation**
    We understand that this would be subject to the main charge associated with the primary activity i.e. coal or gas station only (ref. 2.10.1 or 2.10.3 respectively) as the boilers are ancillary to the main activity.

v. **Multiple CCGTs, for example, on one site**
    We understand that only one charge for CCGT (ref. 2.10.3) would be applicable.

26. Do you agree with our interim arrangements for compliance rating outlined above?
   Yes.

27. Do you agree with our proposals for flood and coastal risk management permitting charges?
   Not applicable.

28. Please tell us if you have any comments in relation to our flood and coastal risk management proposals. In particular, do our proposals cover all activities you may undertake as an operator?
   Not applicable.

29. Do you agree with the proposals outlined for Radioactive Substances Regulations Nuclear?
   Not applicable.

30. Do you agree with our revised permit categories for disposal of radioactive waste from unsealed radioactive sources?
   Not applicable.
35. Do you have any other comments on the Water Discharge and Groundwater Activity proposal?

From industry discussions with EA staff, we understand that these charges are not relevant to Combustion and Power installations. We assume that these charges similarly do not apply in the instance of a construction de-watering permit. We would welcome clarification that this is indeed the case. In addition, we would welcome clarification of what precisely is included within the term “non-exempt thermal” which is listed under Section 4.9.4 of the paper.

38. Do you agree with our proposals for the installations: Energy from waste sector permit charges?

No. The paper carves out a specific exception for waste incinerators and co-incinerators where the EA proposes to charge a fixed pre-construction charge and full subsistence charges as soon as construction begins. While we accept the case for charging once construction has started due to the significant number of pre-operational conditions associated with such plant, we do not support the proposal to charge a fixed pre-construction charge. We do not consider that operators should pay such a fixed charge before construction has started as there is no regulatory effort required by the EA at this stage. In addition, such a charge would incentivise operators to delay applying for a permit as long as possible which would be contrary to the EA’s push to encourage operators to apply for permits earlier rather than later.

43. Do you agree with our proposals for the installations: Combustion and Power sector permit charges?

No. Please see our response to Question 1 above for our main concerns regarding the proposals for the installations: Combustion and Power sector permit charges.

We are also concerned that the new charging regime does not include a category for closed ash landfills. As closed ash landfills would incur much lower regulatory expense than operational ones, they should be subject to a lower and more cost-reflective subsistence charge. We suggest that a new activity be included in Part 2.10 of the charging schedule (i.e. 2.10.6a) to set this lower charge.

Some of the proposals for Medium Combustion Plants (MCPs) need significant clarification.

We understand that subsistence charges will not apply to Medium Combustion Plant Directive (MCPD) plant (other than Part A1). MCP plant will continue to pay those annual charges imposed by the local authority. This clarification was buried in the consultation documents. We recommend that this be made more clear and explicit, as the imposition of Large Combustion Plant (LCP) subsistence charges would place an undue and disproportionate burden on smaller projects and sites.

The application charges for MCPs require more nuanced thought and improved clarity. The current proposals have a two-tiered proposal for MCPs. The logic of applying the rules to high- and low-impact plant is laudable in principle, but the practicalities lead to potential confusion. The definition of low/high impact is unclear for these purposes — is it possible that a high-emitting very small site will be considered lower impact than a relatively lower-emitting larger site? Perhaps that should be the case, but it is unclear where the thresholds are set and at what point in a project development or application stage this is determined.
Will the high- or low-impact determination be location based, incorporating air quality assessments, or rote based, on standard engine efficiencies and nameplate emissions? It seems that if it is rote based, then the difference in cost is justifiable.

If, however, as part of the application, the EA must determine whether it is high or low impact installation based on site and technology details and combinations thereof, which we assume is the bulk of the resource requirement, the user-pays principle and differentiation of charges loses its efficacy. The same (or similar) level of resource is required whether the plant is high or low impact.

Overall, it is not clear that sufficient thought has been given to proportionality. A large CCGT will pay the same application fee regardless of its size, and perhaps that is sensible given that the application fee will be a small portion of the CCGT development cost and arguably will involve largely the same resource requirement whether the CCGT is 300MW, 350MW or 1GW.

However, for the MCP sites, having one tier for all projects of a smaller size (notwithstanding the low-high-impact differential) means that permit applications become an increasing proportion of a project development costs the smaller the plant. Is this really an ideal outcome? The difference between a 1MW and a 50MW plant in terms of environmental impact and project economics is quite different as compared to the comparable differences between a 300MW and 350MW CCGT.

We suggest that the EA should consider additional charging tiers or a more proportionate approach in order to avoid unduly penalising smaller projects in favour of large.

49. Do you agree with our proposals for the waste: waste transfer and treatment sector permit charges?

Not applicable.

50. Do you agree with our proposals for the waste: landfill and deposit for recovery sector permit charges?

Yes. However, where ash on a ‘landfill only serving a combustion plant’ (ref. 2.10.6 of the charging schedule) undergoes basic physical ‘treatment’ prior to export for re-use, will this activity attract an additional subsistence charge (as with landfills considered under Part 2.17)? The basic ‘treatment’ simply involves separating the ash and no additional regulatory effort is required by EA staff as a result of this handling process.

In our view, therefore, such associated activities should be included within the baseline charge set out in ref. 2.10.6 with no additional charge levied. However, this point requires clarification.

52. Do you agree with the proposal to reduce the Thames regional charging area Standard Unit Charge?

Yes.

53. Do you agree with the proposal to remove the River Alre (northern and southern reaches) from the list of supported sources in the Abstraction charging scheme?

Not applicable.
55. Do you agree with the proposed introduction of a new charge for work on external emergency plans?

Yes.

56. Do you agree with the proposal to move from tiered charges to one flat rate annual subsistence charge for installations operators and one flat rate annual subsistence charge for aviation customers?

Yes.

57. Do you agree with the proposal to amend the registry charges?

No. While we recognise the need to increase charges to cover the costs of enhanced security checks for those opening an account and approving users, the increases proposed seem excessive and we would question if they are solely cost-reflective. In addition, we would welcome clarification as to whether the proposed charge of £880 for a change of registry authorised representative would only apply where there is a change to the company and would not apply where there is simply a change of staff member responsible for the account. If the charge applies in the latter instance, we would consider this excessive and unreasonable.

61. Have you used our Definition of Waste panel service?

Yes.

62. Do you use the waste quality protocols or other end of waste framework?

Yes. WRAP/EA Quality Protocol for Pulverised Fuel Ash (PFA).

63. Do you support our proposal to recover the cost of providing Definition of Waste services outlined in section 6.1?

Yes.

64. Please tell us if you have any further comments on Definition of Waste charging proposals.

No further comments.

65. Do you agree with our proposed increase to the hourly rate charged for our bespoke spatial planning advice service?

Yes. This seems reasonable, although the charge levied must be based solely on costs incurred by EA staff in providing this advice.

66. Do you have any concerns that the proposal to increase the charge for our discretionary planning advice service might compromise our ability to carry out our statutory planning advice duties?

No. We do not consider that the increase in charge for the discretionary planning advice service might compromise the EA’s ability to carry out its statutory planning advice duties so long as the charge remains purely cost-reflective. We consider that it is reasonable for operators to be able to access EA advice when preparing to submit a planning application as this can expedite the process for all parties concerned, provided the advice is timely, high-quality and unequivocal.
67. In line with our planning advice service, do you agree with our proposal to introduce a discretionary hourly rate service for our marine licensing advice service?

Any discretionary charging system which is introduced for marine licensing advice must result in advice that is timely, high-quality and unequivocal. It should also provide additional value to advice received from the Marine Management Organisation.

68. Please tell us if you have any comments on our plans to review abstraction charges.

The recent publication of the Government’s “Water Abstraction Plan” confirms its proposals to reform the abstraction licensing system, putting particular focus on the EA to deliver the plan. Since a key part of that plan is to move abstraction and impoundment regulations into the Environmental Permitting Regulations (EPR), it would seem appropriate to review abstraction charges in the context of the aims of the Strategic Review of Charges and to align it with the framework that is implemented for the EPR regime to coincide with that regulatory change.

Our understanding of the current charge proposals is that they will continue to reflect the cost of the EA’s regulatory effort, which we support. Accordingly, we understand that this principle will be applied to the future water abstraction charges and the notion that charges could instead be linked in some way to the perceived value of that water (as raised during earlier government led abstraction reform discussions) has no bearing. In addition to cost-reflectivity, it will be important that future charges are stable and predictable; transparent; and without cross-subsidy between sectors and regimes.

The EA has identified five main themes that will be included in the future review of the abstraction charges scheme:

1. The cost of the EA’s Water Resources management activities;
2. The cost of the EA’s operational activities and specific services that are provided;
3. Ways in which to ensure that the scheme can respond to cost variability within England, while ensuring stability;
4. Application charges; and
5. Ensuring that the scheme is fit for purpose under Abstraction Reform.

These themes and sub-topics identified so far would appear appropriate at this stage. However, it will be important to ensure that only abstraction-related costs are captured in the Water Resources Management activities and not those associated with other determinants of a water body’s categorisation under the Water Framework Directive.

Furthermore, it is not immediately clear how the EA’s proposal to move from eight regional charge account areas to one national charge account area fits with the proposed, disaggregated “catchment approach” to water resource management while ensuring cost-reflectivity. However, if charges are to be determined at catchment level, this will necessarily lead to multiple lists of charges and potential difficulty for abstractors to determine the charge that would apply due to boundary issues, especially where the EA’s “operational catchment” is not the same as the “management catchment”. It will also be important for the EA to clearly identify activities associated with implementing the Water Abstraction Plan that are genuinely incremental or will be done differently from current “business as usual” activities and practices.

We note that the plan is to move abstraction and impoundment regulations into the EPR in 2020. Clarity is required as to how/if the water abstraction activity will be incorporated into an existing EPR permit that currently also has an abstraction licence or whether a new, separate abstraction permit would be required. If the former, we assume a permit variation charge would apply; and if so, consideration will need to be given as to whether these permit variations would/could coincide with
those associated with the implementation of the Large Combustion Plant BREF in order to avoid sequential variation charges. If the latter, we assume there would be no application fee.

Finally, it will be important to ensure that any efficiencies resulting from the merged regulatory regime are realised and the benefit passed back to relevant permit holders through correspondingly lower charges. Where relevant, confirmation that cost of regulatory effort associated with existing EPR water-related charges (e.g. Water Quality and Groundwater Discharge charges) is not also recovered within any aspect of water abstraction charges.

74. Please give us any further comments on our proposals which have not been covered elsewhere in the questions, i.e. If none of the questions throughout the consultation have enabled you to raise further specific issues with these proposals please set them out here with any accompanying evidence.

Throughout the paper, reference is made to Performance Based Regulation and the intention to consult on options for this in 2018. We welcome the intention to consult and support the EA taking the time necessary in order to get such a significant change correct. We look forward to engaging fully in this consultation process.

The combustion sector is due to go through an EA-instigated permit variation process to incorporate the requirements of the Large Combustion Plant BREF (with associated Regulation 61 Notice Requests for Information). We understand from recent discussions with EA staff that they do not expect to levy time and materials charges for this permit variation. Rather, it will be charged at a standard permit variation charge (50% of baseline application charge) or a substantial variation charge (90% of baseline charge) if the variation includes an IED Article 15(4) derogation. However, there are instances of simple or generic derogations for which it may be appropriate to charge at the standard variation charge and we would therefore urge the EA to give this further consideration.

For a permit application to be classified as “Duly Made” the applicant has to pay the correct applicable fee. From industry discussion with EA staff we understand that the applicable fee payable to meet the requirements of a “Duly Made” application would be the “baseline application” fee listed in Table 1.10.

The Draft Guidance to the Environment Agency (Environmental Permitting) (England) Charging Scheme is sparse and requires updating to clarify the points raised within the consultation.

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