

# Water Resources Strategic Review of Charges Consultation – Energy UK Response

## 10 November 2021

*Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.*

*We represent the diverse nature of the UK's energy industry with our members delivering nearly 80% of the UK's power generation and over 95% of the energy supply for the 28 million UK homes as well as many businesses.*

*The energy industry invests £13bn annually, delivers nearly £30bn in gross value added on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors, and supports over 700,000 jobs in every corner of the country.*

### **Response to consultation questions**

- 1. Do you support investment in water resources management to increase future security of water supply and increase resilience to drought?**

No.

- 2. Do you agree with the proposal to introduce a cost reflective charging scheme where an abstractor's charge relates to the service received?**

No.

- 3. Is there any further evidence that you can supply now, or has already been published, that you think will inform the impact assessment, particularly in relation to small and medium-sized enterprises?**

No.

### **Additional comments - charge framework**

**Please provide further explanation to support your responses to any of the charge framework questions, if you think it would be helpful.**

We have been unable to provide a response to these questions based on a lack of information; to ask whether respondents support high level principles without providing the necessary transparency and detail on how the principles are to be applied is both misleading and does not give an opportunity to provide meaningful comment. In our view, therefore, the tick box responses given to questions 1 and 2 should be discounted when assessing the proposals set out in the consultation paper. Instead, full consideration should be given to narrative responses provided in response to "additional comments". Given the above, we have set out our comments below in answer to Questions 1 and 2.

### **Question 1**

Investing in the future security of water supply and resilience to drought is clearly of wider benefit than just to abstraction licence holders – it benefits all users of water, industry and indeed society as a whole. This should be explicitly recognised in the paper and the cost of the necessary investment met by all who benefit from it.

The paper states that raising more income will allow more investment in “EA’s assets to make sure they are safe, effective, cost-efficient and resilient”. This includes work on supported services but appears to be significantly wider covering work on all EA assets. While we accept the principle of recovering the costs of work undertaken on supported sources and recharging those abstractors that benefit from supported sources, we would question whether the cost of investing in and maintaining all EA assets is a legitimate cost to recover via abstraction licence holders’ charges? For example, a number of rivers used by the power sector are controlled using a series of weirs with associated locks. While the power stations could be considered to benefit from the level control, the weirs will have been constructed to support navigation. Intake structures at stations build after the level control systems were constructed will have been designed to operate within the controlled water level. However the controlled water level is a consequence of a navigation and possibly flood control function of these structures.

Given the significant benefit that would result to all society from investing in the EA’s asset management and operation to secure water supply and improve drought resilience, we believe that this should be funded by government grant in aid (GIA) and not entirely recovered via regulated operators’ charges.

We firmly believe more detail and transparency is required to identify the assets that are to be invested in using funds raised via the abstraction charging scheme and that these assets are solely used for the purposes of water level, flow management and supported services, not the EA’s wider asset base which delivers value to society as a whole through flood prevention etc.

In addition, we do not believe that it would be right or indeed equitable to seek to recover the costs of all investment in water related assets from a subset of regulated operators when it is clear that this investment should be funded by GIA. However, in the event that it is not funded by GIA, at the very least these costs should be apportioned across all regulated water users including dischargers, public water suppliers, bankside residents etc. and not solely water abstractors. This would better reflect the wider societal benefit of the water related services provided by the EA.

To be clear, Energy UK fully recognises and supports the need for investment in water resources management to increase future security of water supply and increase resilience to drought. However, the key question that should be asked is who should be paying for the required investment? Energy UK does not support the costs of this investment being recovered in full from abstractors but rather the cost should be fairly attributed across all who would benefit from the investment.

## **Question 2**

Energy UK fully supports the principle of cost-reflectivity and the targeting of costs/charges at those that use or benefit from the service. However, it is not possible to comment meaningfully on the proposals without a detailed breakdown of the services provided and the costs incurred by the EA in providing those services. This information should be published in order to demonstrate a clear justification for the significant increase in charges being proposed. This should be published alongside a list of beneficiaries from the EA’s activities and the details how costs will be shared among the beneficiaries.

The paper states that the EA’s charges have not increased for the last 10 years but within this period the costs required to manage water resources have increased and that the EA has assessed these costs to allow them to develop the proposed charging scheme. However no detail on these cost increases are given in the paper despite a detailed cost assessment having been undertaken by the EA. This information is therefore available and should be shared with industry in the interests of clear and transparent regulation.

In addition to demonstrating that the proposed charge increases are reflective of increased costs, publication of this information would also show that all the costs incurred are legitimate costs to be recharged to water abstractors. For example, the EA undertake a huge amount of additional work for the water companies, and while there is provision in the proposals for an uplift to cover this extra expense, no detail is given on the additional costs incurred by the EA. It is therefore not possible to

determine whether the uplift is cost-reflective of the additional work required for water companies or whether all water abstractors are cross-subsidising the cost of regulating water companies.

Similarly, the revenue from the annual charge is set to increase by ~£22m / p.a. but no detail is given on the increased costs for the services included in the annual charge. In particular, the annual charge includes the costs of asset management and operation, but again no detail of the costs incurred is given or even which assets are included in this charge. Therefore it is not possible to comment on whether it is cost-reflective or indeed a legitimate charge to abstractors. Also, while it is proposed to significantly increase the application charge, there is very little detail given in the paper in terms of services to be included in the application charge, the cost of such services and the proportion of the costs that should accrue to non-abstractor beneficiaries.

In addition, we would expect the EA to demonstrate that any increase in charges are reasonable and that they have the appropriate efficiency measures and cost controls in place. We therefore seek further transparency on this. The paper also refers to unrecovered costs from previous years. Publication of detailed cost information would demonstrate that no such unrecovered amounts are being retrospectively recovered via the proposed charging scheme.

### Timing

We note that the consultation deadline is 10th November with the stated intention to introduce the new charges from April 2022. We do not believe that this allows sufficient time for a thorough analysis of responses and to address any valid concerns raised, given the Christmas holiday period, the need to publish the EA's final proposals and the requirement to get Minister's approval to implement the new charges. In addition, the consultation paper does not include a large amount of the necessary information (particularly in relation to the costs incurred by the EA) to enable respondents to comment fully on the proposals and we have requested that this information is made available in response to a number of the questions. The current timescale does not allow for this information to be published and we would therefore question whether this timetable allows for genuine consultation on the proposals.

The proposed increase in charges will feed into energy costs at a time when they are already extraordinarily high and uncertain. Also, operator's budgets will already have been set for the coming year before any final decision is made. We would therefore propose that any changes to be implemented to water abstractor's charges are not introduced until April 2023 at the earliest given current market conditions, to allow time for a full, open consultation and to allow operators to plan and budget accordingly.

### Application charge consultation questions

4. **Do you agree with the proposal to introduce an application charge that is cost reflective of the service received? This will be dependent on the type of application being made.**

No.

5. **Do you agree with our proposal that only customers requiring additional work are charged the relevant additional application activity charge?**

Yes.

6. **Do you agree with the activities included in the additional charge factors? Please respond agree, disagree or do not know to those listed below.**

- **Enhanced pre-application service**

Yes.

- **High public interest applications**

Yes.

- **Advertising charge**  
Yes.
- **Water undertakers (as regulated by Ofwat) and is for the purpose or supports the provision of water supply**  
Yes.
- **External consultation**  
Yes.
- **Conservation assessments**  
Yes.
- **Amending application during determination**  
Yes.
- **Competing schemes when applications are competing for the same water**  
Yes.

7. Do you agree with the activities included in the additional charge factors? Please respond agree, disagree or do not know to those listed below.

Yes.

8. Do you agree with our proposal to apply a discount to the application charge where an application is being made for more than one activity and those activities are reasonably considered to be part of the same operation?

Yes.

9. Do you agree with the proposed approach for application charges on renewal of a time limited abstraction licence?

Do not know.

10. Do you agree with the proposed approach of charging for variations so that the charge is proportionate to the amount of work we carry out?

No.

#### **Additional comments - application charge**

**Please provide further explanation to support your responses to any of the application charge questions, if you think it would be helpful.**

#### **Question 4**

We have been unable to provide a response to these questions based on a lack of information; to ask whether a respondent supports the high level principle of a cost reflective application charge without providing the necessary transparency and detail to demonstrate that the proposed charge would indeed be cost-reflective of the service provided is in our view both misleading and does not give an opportunity for respondents to comment meaningfully. Until full information is provided of these charges, it is difficult to provide a valid response to these questions when assessing the proposed application charge until such cost information is published. We have responded in more detail on the need for cost information to be published in response to Question 4 above (in relation to Question 2) and will not therefore repeat these points here.

However, in addition to the concerns outlined above, we believe that these proposals need to demonstrate clear alignment with the Environmental Permitting Regulations (EPR) regime given the stated intention to move abstraction licensing into the EPR regime in 2023. While the need for such alignment with the EPR is recognised in the paper, the lack of detail (in terms of both services included in the application charge and the cost of such services) coupled with the significant increase in the charge makes it difficult to understand how these proposals are consistent with the EPR.

In particular, the higher end of the proposed application charge seems excessive when compared to other application charges levied under the EPR. For example, the application charge for a complex bespoke PPC permit for a CCGT, including all modelling and assessments required to be undertaken by the EA across all media (air quality, waste, water discharge etc.) is in the region of £19-20k, yet the proposed application charge for a water abstraction licence only could be as high as £36k. This seems extreme given that there is clearly not the same effort and resource requirement for an abstraction licence application compared to a full PPC permit application. Moreover, current EPR application charges are explicit in what costs they are recovering; abstraction licence application charges need to be equally so in order to be consistent with the EPR regime.

It is also not clear from the consultation that if the work undertaken by the EA for a specific abstraction licence application or variation is substantially less than the charge, will the applicant be offered a partial refund?

### **Question 6**

- Enhanced pre-application service

We support the proposal to include an additional charge factor for an enhanced pre-application service. However, we believe that 1-2 hours of pre-application advice should be included in the basic application charge and that the 'enhanced' service charge should only be applied after the initial 1-2 hours of advice. Such an approach is likely to save time and cost in the long run for both operators and the EA as it will result in better quality applications being submitted at the outset. To be clear, we would support additional advice beyond 1-2 hours being charged by the EA on a time and materials basis.

- Water undertakers (as regulated by Ofwat) and is for the purpose or supports the provision of water supply

We support an additional charge factor being levied on water undertakers as the EA undertake a significant amount of additional work to regulate this group. However, we are unable to comment on the cost reflectivity of the proposed level of uplift as no detail is given on the additional costs that are incurred by the EA. It is therefore not possible to determine whether the uplift is cost-reflective of the additional work required for water companies or whether all water abstractors are cross-subsidising the cost of regulating water companies. We would therefore urge the EA to publish the appropriate cost information in the interests of clear and transparent regulation.

### **Question 7**

Subject to our comment above regarding including 1-2 hours of pre-application advice in the basic application charge before applying an additional charge on a time and materials basis. We would also request that the EA publishes in advance the applicable hourly rates that would apply for each activity.

### **Question 9**

We have responded to Question 9 as "do not know" as clarity is needed to how time limited licences with longer expiry dates (perhaps into the 2030s) will be assessed with respect to 'same and different' terms and how renewals will be charged with abstraction licencing moving into the EPR regime in 2023.

### **Question 10**

We do not agree with the proposed approach of charging for variations as set out in the consultation paper. In our view, the proposal to charge 90% of a full application charge for a substantial variation seems excessive. Even with multiple changes to the original licence, much of the initial work carried out

in granting the licence will not need to be undertaken again and we therefore consider that the charging regime should reflect the effort involved as opposed to an arbitrary figure, and the process followed for varying other environmental permits needs to be used to determine this fee.

### Annual Charge Consultation Questions

**11. Do you agree with our proposal to introduce an annual charge that will be applied to all customers, based on the source of supply, amount of water a licence authorises and the use for that water (loss to the environment)?**

No.

**12. Do you agree with our proposal that only customers that require additional work are charged for the relevant additional charge factors through their annual charge?**

Yes.

**13. Do you agree that the additional costs incurred by us in regulating water undertakers are recovered through a separate additional charge?**

Yes.

**14. Do you agree with our proposal to extend the schedule of supported sources?**

Yes.

**15. Do you agree with our proposal to retain the mechanism to raise the compensation charge in the new charging approach?**

Yes.

**16. Do you agree with our proposals to charge for specific activities on a time and materials basis?**

No.

**17. Do you agree that we continue to offer an abatement of annual charges under the new charging scheme to abstractions that meet the criteria set out? This would mean that when all criteria are met, all or part of the annual charge is removed.**

Don not know

**18. Do you agree with the criteria for the other special charges we propose to retain and introduce? Please respond agree, disagree or do not know to these 2 special charges.**

- **Two part tariff**

Do not know

- **Winter only abstraction discount**

Do not know

**19. Do you agree with the principles proposed to calculate the charge for licences with more than one point, purpose, or aggregate quantities?**

Do not know.

**20. Is the charge indicator tool helpful in working out your charge?**

No.

**21. Would you like this tool available once the scheme is in place?**

Yes.

**Additional comments – annual charge**

**Please provide further explanation to support your responses to any of the application charge questions, if you think it would be helpful.**

### **Question 11**

While we support the proposed approach in principle, we have a number of concerns with the proposals which we set out in turn below. As such, we have answered no to some of the questions above as we consider them to be incomplete.

First, under the proposals, the revenue from the annual charge is set to increase by c£22m/p.a. but very little information is provided on what services are actually included within the annual charge. A detailed breakdown of the specific services to be provided and the costs incurred by the EA in providing these services is vital in order to demonstrate that the significant increase proposed is both reasonable and justified.

Second, the consultation paper states that for the majority of those who have paid the current lower application charge, the cost of the work the EA does regarding the application has been recovered via the annual charge. If this imbalance is now being addressed via the proposed cost reflective application charge, we would expect this to result in an equivalent reduction in the annual charge. However, this is not considered in the paper and we would like to ensure that such costs are not being recovered twice through the new application charge and annual charge.

Thirdly, the charge bands proposed in the consultation could incentivise abstractors to apply for higher bands than expected as the costs do not increase linearly with increasing volume. For example, if a new abstractor expects to be nearer the bottom of a band, it could be advantageous to apply for a licensed volume towards to middle or top of the band, as this will not be more expensive to do so.

### **Question 12**

Yes, this is in line with the principle of cost-reflectivity and targeting costs/charges at those that use or benefit from the service provided.

### **Question 13**

Yes, we strongly agree that any additional costs incurred by the EA in regulating water undertakers are fully recovered through a separate additional charge. However, we are concerned that while it is clear the EA carries out a significant amount of additional work to regulate water undertakers including work on statutory Water Resource Management Plans and Drought Plans, no information is given on the additional costs that are incurred by the EA in doing so. Without this information, it is not possible to determine whether the uplift proposed covers all these additional costs or whether other water abstractors are cross-subsidising the cost of regulating water undertakers. We would therefore urge the EA to publish the appropriate cost information in the interests of clear and transparent regulation.

### **Question 14**

Yes, this is in line with the principle of cost-reflectivity and targeting costs/charges at those that use or benefit from the service provided.

### **Question 16**

The paper refers to charging on a time and materials basis for 'additional compliance effort' but it is not clear what exactly is meant by this. If compliance costs are to be charged on a time and materials basis, what compliance costs are covered by the annual charge? The EA do not carry out regular

inspections or compliance assessments for water abstractors and we are therefore unclear as to what ongoing services/costs the annual charge is seeking to recover? In our view, this lack of clarity needs to be addressed by the EA in order to demonstrate genuine cost recovery and to ensure that there is no over recovery of costs.

We would also request that the EA publishes in advance the applicable hourly rates that would apply for each activity.

#### **Question 17**

Again, further information needs to be made available in order to give an informed view in response to this question. In particular, how many abstractions are expected to meet the criteria set out and how much in monetary terms does this equate to? Also, given that these abstractions provide important environmental and amenity benefits such as supporting wading bird populations etc. is this an appropriate cost to be borne solely by water abstractors or should it more appropriately be spread across all regulated operators?

#### **Question 20**

No, the charge tool is not helpful in working out operators' charges.

At the launch of the consultation the tool linked to the wrong row in the charging tables in some cases, resulting in the wrong charge being calculated. Although this was corrected on 15 September, we are concerned that not all respondents would have picked up on this and therefore may have taken the charge calculated by the tool at face value rather than cross-referencing with the source tables in the actual charging scheme itself. Clearly, the impact of the proposals on an operator's charges will influence an operator's response and this could therefore mislead respondents both in terms of how they respond to the consultation but also in terms of their budgeting going forward.

A further issue with the tool is that it does not allow operators to amend a row of data without completely deleting everything and starting again. This means it is very time-consuming to input the necessary information and also prevents an operator from checking the information input to identify any entry mistakes.

Furthermore, the tool uses a table of charge bands to assign a cost of a given abstraction volume and use. This use of these charging bands has complicated the coding of the charge tool and has distorted the cost per unit volume abstracted. This means that a user with an abstraction license at the upper end of the charging band pays less per volume than a user at the lower end of the charging band. This contradicts the EA's aim of equitable sharing of costs and can lead to distorted behaviour (as mentioned in Question 11 above).

#### **Question 21**

Yes, we would like the charge indicator tool to be available once the scheme is in place, subject to the errors highlighted in response to Question 20 being fully resolved.