Water Industry Act 1991, section 13(1)
Modification of the conditions of appointment of Thames Water Utilities Limited

Made on 29 March 2011

Coming into effect on 31 March 2011

The Water Services Regulation Authority, in exercise of the power conferred on it by section 13(1) of the Water Industry Act 1991 (the "Act"), after giving notice as required by section 13(2) of the Act, hereby makes the modifications described in the Schedule attached hereto to the Conditions of the Appointment of Thames Water Utilities Limited (the "Appointee") as a water and sewerage undertaker under Chapter I of Part II of the Act, the Appointee having consented to these modifications.

Signed for and on behalf of the

Water Services Regulation Authority

Regina Finn
Chief Executive
Schedule

Condition N is deleted and replaced with the following text:

"Condition N: Fees"

1 Interpretation and Construction

In this Condition a "Periodic Review Year" means the Charging Year starting on 1st April immediately preceding the start of a Review Charging Year.

2 Fees

The Appointee shall render the following payments to the Secretary of State at the times stated:

(1) spent;

(2) on 1st April 1990 and at the start of each subsequent Charging Year an amount equal to the costs estimated by the Water Services Regulation Authority (in consultation with the Competition Commission) as having been incurred in the preceding Charging Year by the Competition Commission following:

(a) references under section 14 of the 1991 Act which mention the Appointments (or either of them) only; and

(b) references under Condition B or Condition C;

(3) on 1st April 1990 and at the start of each subsequent Charging Year an amount, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the costs estimated by the Water Services Regulation Authority (in consultation with the Competition Commission) as having been incurred in the preceding Charging Year by the Competition Commission following any reference under section 14 of the 1991 Act which mentions both the Appointments (or either of them) and also any other appointment made under Chapter I of Part II of the 1991 Act;
Within thirty days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this sub-paragraph, an amount equal to the costs determined by the Water Services Regulation Authority as having been or likely to be incurred by it in respect of any reference by the Appointee under paragraph 14 of Condition B and any determination by the Water Services Regulation Authority under paragraph 15 of Condition B made in the Charging Year in which the Water Services Regulation Authority’s notification for the purposes of this sub-paragraph is given;

(5) on 1st April 1990 and at the start of each subsequent Charging Year a renewal fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year by it in the regulation and enforcement of appointments made under Chapter I of Part II of the 1991 Act (including the Appointments) and in the carrying out of its other functions under the 1991 Act, including payments made by it under Schedule 4 to the 1991 Act;

(6) on 1st April of the first Charging Year after the announcement by the Water Services Regulation Authority of its intention to carry out a Periodic Review, and at the start of each Charging Year up to but not including the Periodic Review Year, an additional fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of additional costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year by it in the preparation for or the carrying out of a Periodic Review, over and above the costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year under paragraph 2(5) above;

(7) where the Water Services Regulation Authority so determines, on 1st January in any year, a special fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the amount, if any, by which the aggregate of the costs estimated by the Water Services Regulation Authority to have been already incurred in that Charging Year and to be incurred in the remainder of that Charging Year by the Water Services Regulation Authority in the regulation and enforcement of
appointments made under Chapter I of Part II of the 1991 Act (including the Appointments) and in the carrying out of its other functions under the 1991 Act, including payments made by it under Schedule 4 to the 1991 Act, exceeds the aggregate of:

(a) all renewal and additional fees payable at the start of that Charging Year under the Appointments and all other appointments made under the said Chapter I; and

(b) all amounts (if any) payable in that Charging Year, under sub-paragraph 2(4) and the equivalent provisions in other appointments made under the said Chapter I in respect of references and determinations of the kind described in sub-paragraph 2(4);

subject to its apportioning the special fee, according to the nature of the costs intended to be covered by it, between the renewal fee, the additional fee and the amounts referred to in paragraph (b);

(8) within 30 days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this sub-paragraph, the amount derived from the following formula:

\[ I = M \times \frac{t}{T} \]

Where

I is the amount payable under this sub-paragraph;

M is the expenses, attributed by the Water Services Regulation Authority to the Charging Year in which the notification is given, of the Water Services Regulation Authority, the Secretary of State and the National Assembly for Wales in relation to the establishment of the Consumer Council for Water;

t is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under Paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which the payment under this sub-paragraph is payable;
T is equal to the aggregate of the turnover of the Appointed Business of all of the companies holding an Appointment under Chapter 1 of Part 2 of the 1991 Act, as shown in their accounting statements prepared under Paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which the payment under this paragraph is payable; and

within 30 days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this subparagraph, as derived from the following formula:

\[ J = G \times \frac{t}{T} \]

Where

J is the amount payable under this sub-paragraph

G is:

(a) for that part of the current Charging Year commencing on 1 October 2005, the sum of £2.9 million;

(b) for the following Charging Year, an amount to be specified by the Secretary of State for this purpose (the "Base Amount"); and

(c) for each Charging Year following that one, the Base Amount, increased by the percentage increase in the Retail Price Index between that published for November 2005 and that published for November in the Prior Year;

t is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under paragraph 4 of Condition F for the financial year ending 12 months before the start of the Charging Year in which the payment under this sub-paragraph is payable;

T is equal to the aggregate of the turnover of the Appointed Business of all of the companies holding an Appointment under Chapter I of Part II of the 1991 Act as shown in their accounting statements prepared under paragraph 4 of Condition F for the financial year ending 12 months before the start of the Charging Year in which the payment under this sub-paragraph is payable
Provided that if, in respect of any Charging Year to which sub-paragraph (c) above applies, the Secretary of State issues to the Water Services Regulation Authority any direction or directions under section 37(8) of the Water Act 2003, which requires or require it to recover under this Condition any amount or amounts greater than that produced by the calculation in sub-paragraph (c) above, the amount of that excess shall also be recoverable under this sub-paragraph (9).

(10) On 1 April in any year in the Eligible Period and also, if the Water Services Regulation Authority so determines, on 1 January in any year in the Eligible Period, an amount or amounts, to be determined in respect of each date by the Water Services Regulation Authority, after consultation with the Appointee, in respect of the costs estimated by the Water Services Regulation Authority as likely to be reasonably incurred by it in that Charging Year, or as already having been reasonably incurred by it in the preceding Charging Year (to the extent that such costs have not already been recovered under this sub-paragraph), in respect of the Thames Tunnel project and related works except that the total of all payments made under this sub-paragraph may not exceed £10 million or such higher figure as the Appointee may from time to time agree.

For the purposes of this sub-paragraph:

"Eligible Period" means the seven consecutive Charging Years commencing on or after 1 April 2011 or such longer period as the Appointee may from time to time agree; and

"Thames Tunnel project" means the tunnelling, treatment and associated works relating to the reduction of the volume of untreated sewage discharged into the River Thames referred to in the Written Ministerial Statements made to Parliament on 22 March 2007 (HC Deb 22 March 2007 c52-53WS) and 7 September 2010 (HC Deb 7 September 2010 c9-11WS).

3 Limits on renewal fee, special fee and additional fee applied to Ofwat

3.1 The aggregate of the renewal fee payable in respect of any Charging Year starting on or after 1 April 2000 (other than a Periodic Review Year) and part
of any special fee apportioned to the renewal fee payable in the same Charging Year shall not exceed \(X\), where \(X\) shall be calculated in any year by the equation:

\[
X = S \times \frac{t}{T}
\]

Where the figures in the equation are defined as follows:

"S" is equal to the figure £11.9M, increased by the percentage increase in Retail Prices Index between that published for the month of November 1998 and that published for the month of November immediately preceding the start of the Charging Year in which that renewal fee and special fee are payable;

"t" is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which that renewal fee and special fee are payable;

"T" is equal to the aggregate of the turnover of the Appointed Business of all of the Appointees as shown in their accounting statements prepared under Paragraph 4 of Condition F for the financial year ending twelve months before that start of the Charging Year in which that renewal fee and special fee are payable.

3.2 The aggregate of the renewal fee and any special fee payable in any Periodic Review Year and of the additional fees payable under paragraph 2(6), in the years immediately preceding that Periodic Review Year, shall not exceed \(X\) derived from sub-paragraph 3.1 plus a figure of 0.1, calculated as the sum of the percentages which each such fee represents of the turnover of the Appointed Business, as shown in the Accounting Statements prepared by the Appointee under paragraph 4 of Condition F, as an average over the five years concluding with the previous Periodic Review Year.

3.3 Where:

(1) a Review Notice has been given under paragraph 8 of Condition B;

(2) a Periodic Review falls to be carried out under paragraph 9 of Condition B; or

(3) a Reference Notice has been given under paragraph 10 of Condition B
the Water Services Regulation Authority may, by notice to the Secretary of State, refer to the Secretary of State for determination by him not later than twelve months after the date which is the Review Notice Date for the purpose of the relevant Periodic Review, the question whether the limits on the fees specified in sub-paragraph 3.1 and 3.2 payable in respect of any Charging Year starting on or after 1st April 2000 should be changed (and if so what change should be made to that limit).

3.4 This Condition shall be modified by the change or changes (if any) to the said limits necessary to give effect to any determination made by the Secretary of State following a reference under sub-paragraph 3.3.

4 In this Condition "the 1991 Act" means the Water Industry Act 1991."