



Committee and date

Cabinet

06 September 2017

VARIATION TO WEST MERCIA ENERGY JOINT AGREEMENT

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1. Summary

- 1.1 This report sets out the proposal to vary the Joint Agreement for West Mercia Energy (WME) held by the constituent authorities to enable WME to supply utilities, alongside the supply of energy. It is necessary for each constituent authority to agree to this variation, and thereby enable the WME Joint Committee to then consider and agree any future proposals to supply utilities.

2. Recommendations

It is recommended that Members:

- A. Agree that the current Joint Agreement is varied to include the provision to be able to broker and supply utilities; and
- B. Authorise the Head of Finance, Governance and Assurance (s151 Officer) to finalise and execute the variation.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1. Cabinet has delegated authority to the West Mercia Energy Joint Committee for the exercise of certain functions, where Shropshire Council is currently represented by Cllrs R Macey and N Laurens. As the proposals to vary the Joint Agreement to include utilities are significant and extend the scope of the delegated functions, this delegation is to be approved by Cabinet.
- 3.2. From the 1st April 2017 larger organisations may decide to become a self-supply licensee. The new open water market de-regulation also allows companies to become licensed suppliers of water and wastewater retail services to other businesses. There is an opportunity to become a retailer of water; buying wholesale water services – the physical supply of water and the removal of wastewater from regional water companies. The retailer will package a series of water services and compete for customers in the market place. The water market is undergoing changes to effect more open competition and choice.

- 3.3. There are business risks associated with the development of a new service for the provision of water services. It is considered, however, that the opportunity to enhance the WME offer, particularly to key existing customers, outweighs these risks. The dividend the Council receives from WME is based on WME's performance and there is therefore a risk that this could reduce in future dependent on their trading position and financial outturn. Further, as a Member Authority the Council would be jointly liable for any costs and liabilities associated with WME if the Joint Committee was unable to meet its obligations, although it should be noted that there are comprehensive risk management arrangements in place to mitigate this.

4. Financial Implications

- 4.1. The Joint Agreement states that accumulated surpluses identified for distribution are allocated to Member Authorities each year partly based on the level of trading activity by each Member Authority and partly based on non-member trading activity. There are no proposals to change this methodology. The budgeted dividend in 2017/18 is £269,000 and while extending the agreement to include the provision of water services is not in itself expected to have a significant impact on dividends or savings it should enhance the offer to customers and should help sustain current income levels for the Council.

5. Background

- 5.1. On 14 November 2012 Cabinet provided approval for Shropshire Council to enter into a new Joint Agreement with Telford and Wrekin, Herefordshire and Worcestershire Councils to govern West Mercia Energy (WME) following the sale of the West Mercia Supplies element of the Joint Committee's activities. WME now supplies energy on behalf of its owners to public sector organisations across the country.
- 5.2. From April 2017 central government has permitted the non domestic water supply market to be opened up, to enable businesses, charities and public sector bodies, to be able to choose their supplier rather than rely on a supplier within their region. This option has been available in Scotland since they deregulated their water in 2008. Government hope that competition will improve customer services, lower costs and encourage suppliers to be more innovated with the services they offer. It should be noted that only 6% of the retail market is available for competition so significant savings or dividends are not expected
- 5.3. WME has been working in collaboration with other public sector organisations to establish a national Framework Agreement for the provision of water, waste water and ancillary services (namely CCS, NEPO, YPO, ESPO, TEC and the MOD). Each member of the group view the provision of a water contract to its members/customers as an extension of services and not something where significant retail margins can be achieved.
- 5.4. The option to provide water supplies to WME customers has been considered in depth over recent months. Provision of water services creates new business risks associated with the development of a new service (for

example development of systems, management time focused on an initial low margin product rather than the core WME offering). From the research conducted, however, not providing an offering for water is considered a greater business risk as some of our key large customers may wish, in the future, to procure a joint gas, electricity and water contract from one provider. Being unable to provide such a package in this market space could lead to loss of business. As a consequence the recommendation is that the Joint Committee is given delegated authority in respect of utilities so that WME is able to take the necessary steps to develop a customer offering for water.

- 5.5. To enable WME to be part of any framework and to provide water services in future there is a need to vary the Joint Agreement to add in the ability to supply general utilities alongside the specific supply of energy.
- 5.6. A copy of the proposed variation is attached at Appendix 1.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

West Mercia Energy Joint Agreement – Cabinet 14 November 2012

Cabinet Member (Portfolio Holder)

Councillor Rob Macey and Councillor Nic Laurens (Shropshire Council representatives on West Mercia Energy Joint Committee)

Local Member

All

Appendices

1. Deed of Variation of Contract

DATED

DEED OF VARIATION OF CONTRACT

between

SHROPSHIRE COUNCIL

and

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

and

WORCESTERSHIRE COUNTY COUNCIL

and

THE BOROUGH OF TELFORD & WREKIN

CONTENTS

CLAUSE

1.	Terms defined in the Agreement	1
2.	Variation.....	1
3.	Counterparts	2
4.	Governing law.....	2
5.	Jurisdiction	2

THIS DEED is dated

PARTIES

- (1) SHROPSHIRE COUNCIL of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY5 6SG
- (2) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Shirehall, St Peters Square, Hereford HR1 2HX
- (3) WORCESTERSHIRE COUNTY COUNCIL of County Hall, Spetchley Road, Worcester WR5 2NP
- (4) THE BOROUGH OF TELFORD & WREKIN of Addenbrooke House, Ironmasters Way, Telford, TF3 4NT

(hereinafter referred to as “the Member Authorities or “the Member Authority” as the context determines)

BACKGROUND

- (A) The Member Authorities are party to an agreement in respect of a Joint Committee arrangements for the purposes of arranging for the purchase and supply of energy to the Member Authorities and to other public bodies dated 20th June 2013 as amended by the Deeds of Variation dated 13th February 2015, 24th July 2015 and 3rd January 2017 (**Agreement**).
- (B) The Member Authorities wish to amend the terms of the Agreement as set out in this deed.

AGREED TERMS

1. TERMS DEFINED IN THE AGREEMENT

- 1.1. In this deed, expressions defined in the Agreement and used in this deed have the meaning set out in the Agreement. The rules of interpretation set out in the Agreement apply to this deed.

2. VARIATION

- 2.1. With effect from the 1st July 2017 (**the Variation Date**) the Parties agree to make the following amendments to the Agreement:

a)	Clause 4.1 (Objectives) amended:	This clause is amended to by the insertion of the words: “..and utilities..” after the words “supply of energy” in the second line.
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2.2. Except as set out in Clause 2.1, the Agreement shall continue in full force and effect.

3. COUNTERPARTS

3.1. This deed may be executed in one or more counterparts and any party may enter into this deed by executing a counterpart. Any single counterpart or a set of counterparts executed and delivered in either case by all the parties shall constitute one and the same agreement, and a full original of the deed for all purposes.

3.2. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

4. GOVERNING LAW

4.1. This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

5. JURISDICTION

5.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing the
COMMON SEAL of **SHROPSHIRE**
COUNCIL in the presence of:

.....
Signature

.....
Print name

Executed as a deed by affixing the
COMMON SEAL of **THE COUNTY OF**
HEREFORDSHIRE DISTRICT
COUNCIL in the presence of:

.....
Signature

.....
Print name

Executed as a deed by affixing the
COMMON SEAL of
WORCESTERSHIRE COUNTY
COUNCIL in the presence of:

.....
Signature

.....
Print name

Executed as a deed by affixing the
COMMON SEAL of **THE BOROUGH**
OF TELFORD & WREKIN in the
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Signature

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Print name