

Nadia De Longhi  
Natural Resources Wales  
Rivers House  
St Mellons Business Park  
St Mellons  
Cardiff  
CF3 0EY

6<sup>th</sup> January 2023

Dear Nadia De Longhi,

### **Consultation on Proposed Regulatory Fees and Charges for 2023/2024**

Thank you for consulting on NRW regulatory fees and charges for 2023/2024.

These comments are from Dŵr Cymru Cyfyngedig, the statutory water and sewerage undertaker that supplies over three million people in Wales and some adjoining parts of England. We are owned by Glas Cymru, a single purpose, not-for-profit company with no shareholders. We provide essential public services to our customers by supplying their drinking water and then carrying away and dealing with their wastewater. In this way we make a major contribution to public health and to the protection of the Welsh environment. Our services are also essential to sustainable economic development in Wales.

We have reviewed the consultation documents provided and thought it would be useful to reply by letter as we have a number of detailed comments that cut across the consultation as a whole. In addition we would like to request clarification on some points you make in the consultation as the information provided in the consultation does not readily enable us to answer the survey questions scale in the provided form i.e. whether we strongly agree, agree or strongly disagree etc. with the specific point.

Given the consultation is about a paid for service you provide, our main points detailed here, perhaps unsurprisingly are regards changes to existing costs and resultant service quality.

The consultation signals significant cost increases across a broad range of areas that will impact on Dŵr Cymru. Any and all charges are ultimately paid for by our customers. As a result, we will end up with unplanned short term costs which must be absorbed in other areas of our programme, and could put at risk our ability to deliver other environmental improvements. These costs will directly impact what we are able to deliver as a not for profit entity on behalf of our customers. As such we would like to fully understand the SRoC programme and the benefits it aims to bring over and above the current charging programme. Ultimately, we need to be confident that we can justify our costs to our customers across Wales and parts of England. We find it reassuring that the SRoC programme has been guided by your charging principles, which we fully support. We have structured our response to show where we would look for further clarity from you on how the principles have been met through the SRoC.

As part of the principle of *'transparency of our charging decisions'* we would like to understand how the changes to the fees and charges in the SRoC will support improvements in the levels of customer service that we will receive. Are you able to share a service delivery improvement plan that the SRoC programme

will support through the proposed regulatory fees and charges? The following examples highlight some of the current levels of service we receive and where we would look to see improvements:

- Average time to allocate and duly make assess an Operator Initiated Variation (OIV) application is currently >100 calendar days. Will the SRoC bring in a service delivery KPI to within the suggested 10-20 working days as identified under RGN3 and OI 203\_08?
- We have some OIV applications that were submitted and duly made over 10 months ago. Will the SRoC look to enable duly made applications to be determined within the statutory period of 3-4 months?
- Stages of OI 233\_08 (How we determine an application for a permit or carry out an Environment Agency led variation to a permit) are not being fully completed for OIV's. For example, a number of OIV applications we have currently being determined and exceeding the statutory determination period, extensions have not been sought with us as the operator and applicant (as per 'Asking for More Time').
- Processes are not always robustly followed, for example we are receiving Schedule 5 Requests for Information and Duly Made Letters for Regulator Initiated Variations (RIV), as opposed to Regulation 61 Notices, this highlights potential legal risk and capacity issues of staff within NRW. Does the SRoC provide for capacity building/strengthening and ensure clear processes are developed and followed?
- We are not receiving consultation or notification when there is a RIV being undertaken alongside an OIV (see OI 233\_08 'Deciding to Vary a Permit')
- We are not receiving responses to our pre-application requests, some of which were made in 2020
- We have found Policy decisions constraining Permitting work within NRW (for example delays signing off U\_MON3&4 conditions & new Unconsented CSO guidance). Again does the SRoC provide for capacity building/strengthening to reduce or hopefully eliminate such constraints?
- Will the SRoC programme enable NRW to work within their level of service for determining abstraction licence applications?

We would also like to seek reassurance that any additional time constraints introduced to the permitting process under the SRoC programme, for example as a result of processing charge payments, do not negatively impact permitting process times. Such delays can have the potential to further increase our costs in the delivery of schemes and undertaking of operational activities, and as such can result in delays to the linked benefits to customers and the environment.

To further ensure transparency of charging decisions it is essential that clear implementation and performance reporting guidance is provided alongside the charges. To be consulted on the charges themselves and not any accompanying guidance does not enable a clear understanding of how the programme will be implemented and hence how the charges are to be regulated, applied or performance reported. Are you able to provide the definitions, guidance and rules to describe the different categories of activities, explanations of what supplementary charges would apply and rules on how to treat sites undertaking several activities all within one permit? The following are examples of areas where further guidance and clear procedures would provide clarity:

- Revocation of previous charging schemes
- 'Interpretation' section, over and above the glossary provided, with legal definitions. For example, for 'Hazardous Pollutants' currently referenced in the glossary, separating types of variation, we would have expected to see further detailed description such as:

- *'for a groundwater activity, hazardous substances (as defined by paragraph 4 of Schedule 22 to the Regulations) and / or non-hazardous pollutants (as defined by paragraph 5 of Schedule 22 to the Regulations), with the exception of discharges that only contain or are only likely to contain as their primary pollutants, ammoniacal nitrogen or ammonium and suspended solids;*
- *'for a water discharge activity, priority hazardous substances, priority substances or other pollutants as defined by the Environmental Quality Standards Directive (EQSD) (2008/105/EC, as amended by 2013/39/EU), specific pollutants as defined by the Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015 or other substances which were listed in Part 6 of the River Basin Districts Typology, Standards and Groundwater threshold values (Water Framework Directive) (England and Wales) Directions 2010;'*
- Information with regards to development of special charges (for example EA charging a reduced fee for EDM variations via a Special Charge)
- Abatement of charges if NRW considers it to be 'significantly disproportionate' having regards to actual costs and expenses incurred
- Liability to pay charges
- Where Nature Based Solution permitting fees fit in relation to the "Bespoke" charges

Clear guidance would also provide clarity on the differences in charges between the regimes in EPR. The following provide some examples of differences we have identified:

- Returned applications: we note returning a Water Quality application is a fixed fee which appears to be 10% of the application charge. For Site Based Waste this is 24-36% and for Installations this is 14%. Environmental Permitting Regulations guidance for Duly Making sets a standard of 3 hours of assessment across all EPR regimes, so it is not clear as to why fees vary across different areas.
- Administrative variations: For Water Quality Discharge applications this is a fixed fee of £352 regardless of facility type, for Installations this is a fixed fee of £595 and for Site Based Waste this is £696. We assume the definition of administrative variation is consistent across all regimes, that is a change which does not require technical input from NRW, such as a change of address, typographical errors. Please could you provide clarity around these differences in charges across regimes.
- We notice that there are clear explanations that NRW initiated administrative variations for Site Based Waste and Installations will be free of charge, however, this is not made clear for Water Quality. Another example is found in Appendix 3, where it is explained that NRW may use judgement on whether to return part or none of the fee for a Withdrawn application, we would expect see this as the same across all EPR. Clear guidance could outline key messages that are consistent across the whole scheme and highlight explanations for any differences.
- We note that in Appendix 6 on Species Licensing waivers are introduced as *NRW does not want charges to discourage activities that are in the best interests of the public and of protected species.* Along the same principles does the SRoC allow for any cost variability for environmental NGOs other than for activities under Appendix 6?

Further guidance would be beneficial regarding the pre-application advice for abstraction licencing. The process should include for a quote for this advice prior to work commencing based upon the scope of the applicants query. This should include approximate staff hours input. This would help to drive efficiency and help applicants to budget resources. In addition, it should be made clear, particularly for complex

applications whether the preferred route for NRW is to have pre-consultation or to go straight to full application. It would be useful to provide an example of when the pre-application route might be useful. If the pre-application route is used, then thought should be given to the overall charge, as pre-application work may reduce the effort needed in the application determination. There may be merit in capping to total cost to the complex application charge. This would again support the applicants budgeting.

We would like to raise our concerns regarding the lack of guidance in the Consultation around charging for Regulator Initiated Variations (RIV) originating from the NEP. We reference the EA's paper to the Strategic Water Quality and Waste Planning Group (SWQWPG) titled 'National Permitting Service – Charging for WQ Permit Review' (04/12/2019). This paper introduced the invoicing procedure for charging for RIV's from the WINEP, it also outlined the relevant charges from their Permitting charging scheme that Water and Sewerage companies in England will be charged for WINEP RIV's, namely:

- £903 – where the variation to an activity is to add EDM requirements. These are special cases as defined by paragraph 9(4) (d) of the Charging Scheme.
- Minor variation – where the variation relates to an activity on the WINEP, and the variation is only to add those requirements with no further assessment required

Please can NRW clarify what charges will apply to RIV's originating from the NEP. Will it take a similar process that EA's follows that charges of 'Minor Variation' for each driver on the NEP and potential special charges for variations incurring minimal work (U\_MON3 & U\_MON4 in AMP7 for example)? Likewise, as per the EA, will the add-on fees not apply, given the modelling work undertaken at the planning stage negating the need for further modelling/HRA whilst determining an NEP RIV? With respect to charges will Dwr Cymru be invoiced following NRW initiating and completing the RIV's, will there be an annual up-front payment based on an agreed work plan, or will payment be required when providing relevant information to inform the RIV's (in response to a Regulation 61 notice or prior to receiving one based on a work plan)? These issues should be clarified to enable the new charges to be workable for both NRW and Dwr Cymru permitting teams given that a majority of the Permitting workload stems from the NEP. This is seen as a potential major concern which is not applicable in the current process due to a single variation charge (and no add-on charges) existing in the charging scheme. Without the above detail being provided from the SROc programme it does not enable us to accurately forecast permitting charges associated with the remaining AMP7 and AMP8 NEP, which reduces our ability to fully consider costs in our Business Planning.

We have attempted to forecast Permitting charges for the AMP8 NEP (as currently drafted). Our current estimates based on assumptions from the SROc consultation documents shows a more than 4 times increase in current charges, from approximately £1.5m to £6.3m. In comparing equivalent charges in England made by the Environment Agency we would estimate only a 1.6 times increase in current charges to £2.6m. Such a significant increase, not only in AMP8 but potentially within years 4 and 5 of AMP7, would result in a reduction in investment that could go towards delivering environmental improvements.

With respect to the principle of keeping charges as low as possible through a continued drive for increased efficiency we note some marked differences between proposed NRW charges and those of the Environment Agency (EA). Given that permits are determined in line with often identical legislation (EPR, Habitats Regulations, Water Framework Directive Regulations) and often identical guidance (we note NRW's utilisation of legacy EA OI's such as Duly Making and Determination), are you able to provide further detail to understand where these differences sit. Please can a breakdown of the charges be given for each water industry related charge, for example the proportion originating from direct and indirect costs. IF this could be represented in a pie chart like that which the EA presented in their SROc in 2018, it may aid our understanding of any such differences.

What work has been carried out by NRW and other regulators and their respective Permitting Services to enable NRW to identify efficiency opportunities of risk assessments and permit determinations? The following provide some examples of differences in charges that have been identified:

- Domestic household discharges <5m<sup>3</sup>/day, EA = £125 (including HRA), NRW = £3,622 with a potential to rise to £9,090 if ERA & HRA required
- HRA add on charge for WDA applications, EA = £779, NRW = £2,637-£4,806. Whilst we understand EA consult with Natural England who are a separate body, we aren't sure if this justifies a 350-600% uplift in assessment cost
- Trade effluent discharge <5m<sup>3</sup>/day with HRA & ERA, EA = £3,239, NRW = £12,655

Regarding the additional fees for Habitats Regulation Assessments (HRA) and/or Environmental Risk Assessments (ERA), we would appreciate clarification as to the meaning of an 'Environmental Risk Assessment'. The link in the SROc consultation appears to indirectly link to the EA's website regarding 'Surface Water Pollution' assessments. Our interpretation of this is that any application that requires screening (as per OI 17\_13) and/or modelling (sanitary determinands and hazardous substances) will be charged the add on ERA fee. Please can you confirm whether this is a correct interpretation or not. For clarity can specific definitions be added to the charging scheme.

If our ERA interpretation is correct, we note there is an add on charge for ERAs for the Emergency Discharge (ED) activity type. There is no modelling required for ED's, the requirement is to meet a minimum set of mitigation criteria, therefore we are not clear on why there is an ERA fee for an ED when there is no risk assessment. Please can this point be clarified? We also do not understand why the HRA & ERA fees are similar to those for CSO & sewerage network discharges when there is no modelling required. Are you able to clarify that the HRA & ERA time recording data utilised to produce these fees take account of the requirements across differing areas? Where do SSSI Appendix 4 assessments fit in within the process and are these part of the ERA fee or the HRA fee?

The completion of a HRA is dependent on information from the ERA, for example the screening and modelling outputs of the ERA will form the bulk of the HRA assessment in terms of impact to water quality (chemical) and achievement of nutrient objectives within the SAC Management Plans. We therefore do not understand why the cost of both add-ons is the same when there is a significant amount of overlap between the two assessments. Could you provide clarity as to whether these efficiencies have been identified in the charging scheme and if a reduced fee would be applied when both assessments are required? This could be further detailed in supplementary charging guidance.

Please can you clarify when a HRA is required so we can accurately foresee when this add-on will be required for business planning purposes. Historically we have been told it is based on a 10km screening distance, but we have recently had conflicting reports, i.e., a HRA may be required if the facility discharges to a tributary of a HRA even though it may be >10km upstream. Without clarity in guidance this could lead to ambiguity around which charge is applicable that could lead to delays at Duly Making.

It is also noted that the definitions of different types of variations as detailed in Appendix 10 - Strategic Review of Charging Glossary require clarification. Currently it reads as though if a HRA is required it can be through either 'Normal' or 'Substantial' variation.

On the charging principles of avoidance of cross subsidy between regimes and not profiting from charge payers, for Water Quality discharge applications relating to water industry assets, we note the fees for ERA's and HRA's exceeds those for 'Domestic Treated Sewage'. For water quality discharge permit applications (OIV & RIV) for water industry assets, the modelling which informs the ERA/HRA is always completed by the

operator, whether it is for continuous or intermittent assets. For water quality discharge applications for 'Domestic Treated Sewage', the modelling is always completed by NRW (unless coastal) as per relevant H1 annexes. Please could you provide clarification on why the water industry risk assessment fees are higher given the lesser demand on NRW resource. Will there be an 'abatement' process considering a reduction in charge when the applicant has undertaken the assessment.

With respect to the charging principles of providing longer term planning horizons wherever possible and to avoid cycles of cutting and increasing charges by managing surpluses and deficits, the initial rise of 6% in annual subsistence charges for 2023-24 appears to go against these principles. This increase adds an unforeseen cost to our budgeting for 2023-24 and the consequence of this in terms of delivering other customer priorities as it will not be possible to deliver compensating efficiencies at such short notice. A smoothing rate over the remaining years of AMP7 and early provision of potential changes in AMP8 would allow us the opportunity to develop and implement compensating cost saving initiatives, avoiding this cost effectively being passed onto our customers. Such efficiencies could be linked to NRW's service delivery improvement plan, enabling us to have more certainty around permitting delivery times within our own delivery times.

In summary whilst we agree with aims and the charging principles used to develop the SROc programme the comments that we have provided above show areas that need further clarification and detail on how the aims and principles have been fully met, specifically around providing guidance around implementing the programme and the improvements to service delivery that could be expected to be achieved through the programme.

We would like to request a meeting to present our comments and answer any questions you may have, to enable any final draft of guidance associated with the changes to the charging regime to be robust and workable.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tony Harrington', with a long horizontal flourish extending to the right.

Tony Harrington  
Director of Environment

cc. Eifiona Williams