

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 15 February 2018</b>
<b>Title of report:</b>	<b>Variation to West Mercia Energy Joint Agreement</b>
<b>Report by:</b>	<b>Cabinet member infrastructure</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose and summary**

From April 2017 the government opened up the non-domestic water supply market 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 report proposes 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.

This variation does not impact on the council's Constitution.

## Recommendation(s)

That:

- (a) the West Mercia Energy Joint Agreement be varied to include the provision to be able to broker and supply utilities; and
- (b) the Director for Economy, Communities and Corporate be authorised, following consultation with the Solicitor to the Council, to finalise and execute the variation.

## Alternative options

**Do nothing – not to enter the water services market.**

1. Research conducted by WME has indicated that not providing an offering for water is considered a business risk as some of WME's key large customers will be looking in the future to procure a joint gas, electricity and water contract from one provider and not being in this market space could lead to loss of business.
2. As a consequence the recommendation is to take the necessary steps to develop a customer offering for all utilities.

## Key considerations

3. In 2012 Cabinet granted approval for Herefordshire Council to enter into a joint agreement with Shropshire, Telford & Wrekin and Worcestershire Councils trading as West Mercia Energy (WME). WME now supplies energy on behalf of its partners to public sector organisations across the country.
4. From April 2017 the government opened up the non-domestic water supply market 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 to replicate the successful impact deregulation has made in Scotland which has seen<sup>1</sup> a 26% increase in customer satisfaction, £35m of water efficiency savings and £30m of customer savings. It should be noted that only 6% of the retail market is available for competition so significant savings or dividends are not expected.
5. WME has been working in collaboration with other public sector organisations, namely CCS, NEPO, YPO, ESPO, TEC and the MOD to establish a national framework agreement for the provision of water, waste water and ancillary services. Each member of the group view the provision of a water contract to its members/customers as a provision of service and not something where great savings in retail margins can be achieved, certainly not initially.
6. The WME Annual Business Plan for 2017/18 included the recommendation that the Joint Committee: support in principle the addition of a water supply service to the range of services offered by WME. To enable WME to be part of any framework there is a need to vary the joint agreement to add in the ability to supply utilities alongside the supply of energy.

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<sup>1</sup> Scottish Water Business Stream Ltd

7. Whether to provide an offering for water to WME customers has been closely considered over recent months. Progressing with water services comes with business risks associated with the development of a new service (systems, management time focused on an initial low margin product rather than the core WME offering). Not providing an offering for water is considered a greater business risk.
8. Although the non-domestic water supply market has been opened in England, it remains closed in Wales. As such organisations currently supplied by Welsh Water, which is the predominant supplier in Herefordshire, are currently unable to switch supplier.
9. Shropshire, Telford & Wrekin and Worcestershire Councils have already approved the proposed change to the joint agreement.

## **Community impact**

10. The council, schools, colleges and other public sector organisations currently purchase energy from WME and secure good value for money.
11. Although organisations supplied by Welsh Water are currently unaffected by the changes to the non-domestic water supply market, any organisations supplied by alternative water suppliers would be eligible to utilise WME to provide a similar service.
12. Enabling WME to broker and supply water will support Herefordshire Council to deliver the corporate plan objective to 'Secure better services, quality of life and value for money.'

## **Equality duty**

13. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
14. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. West Mercia Energy will be made aware of their contractual requirements in regards to equality legislation.

## **Resource implications**

15. The Joint Agreement includes the provision 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.

16. This income is included within the Medium Term Financial Strategy (MTFS) and whilst extending the agreement to include the provision of water services is not expected to have a significant impact on dividends or savings it will enhance the offer to customers and should help sustain current income levels for the council.

## **Legal implications**

17. From the 1 April 2017 new open water market de-regulation allows companies to become licensed suppliers of water and wastewater retail services to other businesses.
18. The facilitating statute is the Water Act 2014 which will allow public sector customers to switch retail water supplier, hence pursuing opportunities for achieving better economies of scale in their purchasing activities.
19. The council does not have a duty to enter into these arrangements but it has the power to do so under Section 1 of the Localism Act 2011 which confers upon the council a power to do anything that individuals generally may do (the general power of competence); any pre-commencement restrictions or post-commencement limitations which would apply to the exercise of this power have been identified.
20. The current joint agreement dated 20th June 2013 refers to arrangements for the purposes of arranging for the purchase and supply of energy to the Member Authorities and to other public bodies. The proposed variation seek to include utilities in the description of what can be purchased and supplied by WME.

## **Risk management**

21. Any decisions about the future development of the WME business are determined by a Joint Committee upon which Herefordshire Council is represented by the Cabinet Member for Infrastructure, acting upon information from an advisory group comprising of senior officers.
22. There are business risks associated with the development of a new service however it is considered that the benefit of enhancing the WME offer, particularly to key customers, outweighs this.
23. It should also be noted that the dividend the council receives from WME is based on their performance and there is therefore a risk that this could reduce in the future dependent on their trading position and financial outturn.
24. 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.

## **Consultees**

25. This proposal has been consulted at the WME Joint Committee and has been developed in partnership with WME's Flexible Energy Advisory Panel (FEAP). This panel comprises finance, procurement and energy management officers from across Herefordshire, Shropshire, Telford & Wrekin and Worcestershire Councils.
26. This report has been circulated to group leaders, however no comments were received.

## **Appendices**

- Appendix A – Draft Deed of Variation.

## **Background papers**

- None.