

Variation to West Mercia Energy Joint Agreement

Meeting: Cabinet

Meeting date: Thursday 16 September 2021

**Report by: Cabinet member commissioning, procurement and assets,
Cabinet member finance, corporate services and planning;**

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

This report recommends to Cabinet and seeks approval that the Joint Agreement be varied to update the formulae for the distribution of the accumulated surplus each year.

The proposed new method ensures that if one Member Authority decides to adjust their margin compared to the other Member Authorities, then the impact is solely on the Member Authority making the change.

The Joint Agreement includes the provision that accumulated surpluses identified for distribution are allocated to Member Authorities each year.

Recommendation(s)

That:

- a) the West Mercia Energy Joint Agreement be varied to update the formulae for the distribution of the accumulated surplus each year; and**
- b) the interim Director for Economy and Place be authorised, following consultation with the Solicitor to the Council and S151 Officer to finalise and execute the variation.**

Alternative options

1. Do not agree the new distribution formulae. This option is not recommended because the current method was set up on the basis where all Member Authorities adopt the same margin approach. Should this not continue to be the case in the future then an alternative method is required to ensure an equitable distribution. Should a member wish to reduce their margin the current method would negatively affect all Members rather than just the member wishing to reduce their margin.
2. The proposed new method ensures that if one Member Authority decides to adjust their margin compared to the other Member Authorities, then the impact is solely on the Member Authority making the change.

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. 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.
5. The accumulated surpluses are distributed in October of each year to the Member Authorities.
6. Under the current formula those Member Authorities with a larger gross profit contribution, whilst getting a greater return, in effect also contribute to the cost base to a greater extent.
7. In addition, should one Member Authority choose to trade less with WME or require a lower margin approach to the others then the current formula would have some weaknesses and an alternative option is more appropriate.
8. The current method was set up on the basis where all Member Authorities adopt the same margin approach. Should this not continue to be the case in the future then an alternative method is required to ensure an equitable distribution.
9. At the meeting of the Member Authority Key Officers on 5th February 2021 there was a consensus to change the method with effect from the October 2021 distribution. Any change to the distribution formulae requires a change to the Joint Agreement which requires sign off by each Cabinet.
10. The current method was set up on the basis where all Member Authorities adopt the same margin approach, there is however significant risk to this. Should a member wish to reduce their margin the current method would negatively affect all Members rather than just the member wishing to reduce their margin. The proposed new formulae ensures that if one Member Authority decides to adjust their margin compared to the other Member Authorities, then the impact is solely on the Member Authority making the change thus protecting the other member authorities from this existing risk.

11. The Member Authorities propose to amend the terms of the Agreement as set out below. The amount of the accumulated surplus to be distributed to each Member Authority in a Financial Year shall be calculated in accordance with the following formula:

$$DA = A + B - C (+ \text{ or } -) D (+ \text{ or } -) E$$

Where:

DA is the distribution amount from the accumulated surplus to be paid to an individual Member Authority in a Financial Year;

A is the gross profit contribution generated by that Member Authority's transactions with WME during the previous Financial Year;

B is 25% of the gross profit generated by non-Member Authority customers during the previous Financial Year;

C is 25% of the expenditure incurred by WME during the previous Financial Year;

D is 25% of the amount allocated in WME's accounts for movement in the retention sum during the previous Financial Year, which may be a positive or negative figure;

E is 25% of the amount allocated in WME's accounts for other movements in WME's General Fund during the previous Financial Year, which may be a positive or negative figure.

Community impact

12. The council, schools, colleges and other public sector organisations currently purchase energy from WME and secure good value for money.

Environmental Impact

13. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
14. WME provide Renewable Energy Guarantees of Origin (REGO) backed 100% renewable to electricity to customers who chose this option.
15. In 2019 Herefordshire Council switched its supply of electricity provided by WME to 100% REGO backed renewable energy which supports support the delivery of EN5.1 (reduce the council's own carbon footprint) from the councils county plan.
16. This decision relates to the distribution of financial surplus of WME and does not have a direct environmental impact. However it should be noted that this surplus received by Herefordshire Council has in previous years been allocated to the Climate Reserve. Whilst the updated formulae does result a reduced return to Herefordshire which will be added to the Climate Reserve, the updated formula significantly reduces the risk of a larger reduction in future years if partner authorities vary their margins.

Equality duty

17. 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.
18. 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. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

19. Under the new distribution formulae there is little impact on either Shropshire Council or Telford & Wrekin Council as their effective rate under the current method is approx. 25% (24.7% and 25.1% respectively). The impact is somewhat greater for Herefordshire Council and Worcestershire County Council as their current effective rates are either side of the 25% mark (22.4% and 27.8% respectively).
20. To illustrate this the below is provided based on figures from financial year 2019/20:

Variation in Methods:				
		<u>Current Method</u>	<u>Proposed Method</u>	<u>Change</u>
	Shropshire Council	£274,804	£272,276	-£2,528
	Worcestershire County Council	£308,268	£335,161	£26,893
	Telford & Wrekin Council	£279,031	£280,219	£1,188
	Herefordshire Council	£248,614	£223,061	-£25,553
		£1,110,717	£1,110,717	£0

21. For reference the previous 5 distribution payments to Herefordshire Council are below:

Payment Date	£
Oct 20	248,614
Oct 19	149,735
Oct 18	174,123
Oct 17	230,054
Oct 16	439,028

Legal implications

22. There are no legal issues arising from this report to bring to the attention of the decision-makers.

Risk management

23. 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 Commissioning, Procurement and Assets and the Cabinet Member for Finance, Corporate Services and Planning, acting upon information from an advisory group comprising of senior officers.
24. 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.

Consultees

25. West Mercia Energy constituent authorities.

Appendices

- None.

Background papers

- None identified.

Please include a glossary of terms, abbreviations and acronyms used in this report.

REGO - Renewable Energy Guarantees of Origin

WME - West Mercia Energy