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Re: Response to consultation paper on the “Economic regulatory framework for the public Irish Water services sector”.

We refer to your recent documents CER/13/245 and CER/13/246 and wish to make some general comments in relation to both documents and some specific comments in relation to the questions posed.

Funding of water services authorities by commercial ratepayers.

The information note provides information on the CER and the water system. The note provides information on investment in the water system which is incomplete and should be expanded to include the following clarification. Expenditure can be analysed into two broad categories of operational and capital. The classification of what constitutes operational expenditure and what constitutes capital expenditure varies across business sector and jurisdiction. The interpretation of what expenditure should be classified as either operational or capital varies between the existing interpretation of local authorities as prescribed by the accounting framework set by the minister for the environment community and local government, and the interpretation of the CER and IW. Certain spend currently classified by local authorities as operational will be classified as capital. Therefore in the context of the understanding of the text 'investment in water network' (*pages 16 and 17*) an omission is made by the CER. Reference is made to WSA matching funds, identifying user contributions, development levies, borrowings and revenues from non household water customers. This list is incomplete and should be amended to include the contribution made by ratepayers in the funding of the water network. Rate payers contribute considerably to the cost of what will be classified in the future as operational and capital spend.

The paper references water infrastructure assets that are currently owned by the state. This is not strictly accurate as Dublin city ratepayers have funded significant water assets throughout the city and indeed the region. It would be appropriate for the CER to reflect this in the paper.

Expectation of a uniform level of funding

The information note references that funding is not allocated equally between 34 WSAs (page 17). Issues are listed as a bias for this distributions water conservation, environmental factors and economic objectives. Omitted from this list is the key driver of the current rationale for funding allocation which is demand. There is a greater demand for water in Dublin as there is higher population density with associated higher economic and domestic activity. This is a valid basis for funding of higher values than those in less populated areas.

Borrowing Restrictions

Capital investment across selected WSAs are referenced on page 19 of the information note. It would be useful to note in conjunction with table 9 that severely limited borrowing restrictions were applied to local authorities as part of the public sector which restricted capital investment.

Efficiency Gains

It is not clear as to how the efficiency gains outlined on pages 20, 21 and 24 will be achieved. Since the commencement of 2013, the Water Services Network has been operating at increased costs and potentially less efficiently than in 2012 because of the introduction of a fledgling organisation, Irish water. The organisational costs of Irish water are not known but at whatever value, these costs do not represent an efficiency gain but rather represent a cost burden which will reduce in time as knowledge and understanding of the sector grows in time within Irish water. It seems myopic in nature to comment on potential savings and efficiency gains that can be achieved in local authorities without in equal measure commenting on the absolute requirement to keep the costs of Irish water as an entity as low as possible and to ensure that Irish water as an entity makes good progress in becoming sufficiently knowledgeable to add value to the sector rather than being an overhead, which is the clear risk in the early years.

It is difficult to see the basis on which the CER can estimate that a dividend can be returned to the water services customer in light of the set up costs of Irish water. Also the CER notes that the government may engage in a form of revenue subvention to Irish water. This is treated in the paper as a dividend for the water consumer, inappropriately. Water consumers are consumers of public services and many will be taxpayers. It is a cursory approach by the CER to regard this additional funding as a benefit when the opportunity cost benefit analysis of what economic and social benefits that funding might yield in other circumstances is not articulated.

(Reference also page 5 and 8 of the consultation paper)

Reform of water sector

The information note correctly references the DoECLG paper which proposed the creation of Irish water to take over water investment for the water network. It should be referenced here by the CER that the cost private financing likely in the medium term to be available to Irish Water will most likely to be higher than the cost of financing available to local authorities through the HFA. Consequently the objective of creating Irish water is not to achieve funding with a lower cost of capital but to achieve funding that is not sourced through public sector financing channels.

Definition of water customer

It would be useful to fully define the water customer which is a non domestic and domestic user, current and future user. It is important that people in a domestic capacity can make decisions now to reside in an area on the expectation that supporting services will meet their needs in the future. It is important that people in a business capacity can make decisions now

to invest in an area on the expectation that supporting services will meet their needs in the future.

Support for Regulation

Dublin city council welcomes the role of the regulator and considers that the key regulatory objective will be to ensure greater investment in water services having regard to the input from local authorities and Irish water and having regard to the needs of all customers.

RPI - X

References throughout the document to the use of RPI - X as a revenue cap framework are misleading. It is accepted that the water services network has been underfunded through the reduced availability of capital publicly sourced funded and constricted operational budgets. Therefore the most appropriate model is one that seeks to make efficiencies, while recognizing movements in inflation and makes provision for the absence of base funding or catch up which is required i.e. RPI - X + U (catch up funding for base services). Also in the context of a rigid cost base for local authorities on cost elements such as basic pay, it is not clear as to how efficiency gains beyond a threshold can be achieved if it is accepted that pay rates cannot move unless mandated by central government.

Dublin water customer

The paper does not specify that tariffs will be applied on a national basis. Water tariffs are generally lower in Dublin than elsewhere and reflect the economies of scale which the regional operations of the Dublin authorities have brought to the water network and also the investment in operational and capital aspects of the service made over successive decades. Dublin is the economic lead for the national economy and water is essential to the Dublin economy. It would be wholly unjust to apply a national tariff to non domestic water users in Dublin thereby limiting Dublin business with what are the relevant costs for businesses in another location. Dublin city council proposes that a tariff be applied to the Dublin region based on the cost base of providing water to that region.

Principles of regulation

The paper indicates principles of regulation. It would be useful for the CER to confirm that these principles apply to local authorities in addition to Irish Water.

Q1:

While there is a similarity with the Electricity and gas utilities in that infrastructure is required to provide water to every home and industry as needed, we believe because of the particular and important role of water in society, that the regulatory framework for water should be built from first principles and the gas and electricity frameworks used as a very general guide.

Q2:

Water in all the documentation is considered a utility similar to electricity and gas. This could not be further from the truth where gas and electricity are sources of energy; the provision of water is the "key to the survival of all human, animal and plant life. It has the ability to mix with some substances, to corrode others, to operate as a vapour, liquid or solid and at the same time has extraordinary self-cleaning properties". (Ireland at Risk, IAE, 2007).

While this describes the role and importance of water in society the evidence of global warming is now accepted and Ireland is already experiencing the start of climate change. The growth in Ireland's population together with climate change means that demands and threats to both surface and ground water resources have grown in recent years. This has been compounded by urbanization, agriculture, industrial development and tourism.

In this environment while the provision of water to meet societies needs requires an infrastructure, the availability, treatment and conservation uses makes it unique for the CER, as a regulator, because while “protecting the interests of final customers is central” to you as CER, we would contend that the utilization of water in the most sustainable manner should also be a central pillar of your brief. While it is probably not intended the brief quoted above gives the impression that “cost to the customer “ is the overriding criteria where we would suggest that your pricing should be based on providing the appropriate needs of society, which would include safeguarding and securing future supplies.

The role of water in society is far more complex than that of energy.

There are major differences between energy and water such as,

1. Water is sourced in Ireland Energy can be imported.
2. Water cannot be substituted as a life sustaining subsistence. Energy can be substituted in many forms from fossil fuels to renewable.
3. Water, for human consumption has to be treated twice and may then be reused many times downstream energy, in general, does not require treatment and if renewable may be reused or if fossil based is not reused.
4. The quality of the treated water is critical to the well being of the consumer. The quality of the energy is not critical to the user but may indirectly be detrimental.
5. Water is a finite source and its renewal is dependent on many unpredictable factors energy because of the availability of alternatives, has no such issues.
6. Water and Wastewater infrastructure for planning and development takes a longer timeframe and has to be integrated together to get the best sustainable solution. With regard to energy planning and development of an area is much less significant and can be provided for within shorter timeframes and less capital investment

While the EPA has its role clearly defined it is essential that the brief of the CER is not solely confined to Irish Waters costs, revenue sources and strategic plans. The holistic use and availability of water to society, the threats and demands on it and the protection and conservation of water so that society and the economy can grow in a sustainable manner has to be incorporated into the CER regulatory framework. This could possibly be achieved by including the EPA in the economic model in some form.

Additionally although the EPA is a critical stakeholder in the water services network, the importance of the water services network in terms of land use, planning and subsequent economic development is understated in the paper.

Q 6

Role of the Local Authority

It is noted that, as defined by CER, that the focus of the regulatory framework is on economics and Irish Water.

The proposed framework does not appear to take into consideration how Irish Water will provide the services to the customer. This will be achieved through a service level agreement (SLA) with the relevant local authority. The local authorities are being mandated, by legislation,

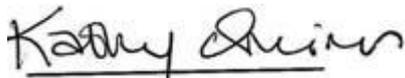
to form a twelve year SLA with Irish Water with no "opt out" clause. This effectively means that the regulatory "wins" perceived by CER may be carried out without any consideration of the role of the local authorities in relation to their capability within the SLA and the limitations/ restrictions imposed as part of the government system, e.g. ban on recruiting the necessary resources, sourcing finance. These restrictions will become very relevant when CER introduce benchmarking for IW if, as is usually the case, it is passed directly on the parties holding the SLA.

In addition water and waste water are critical to the development plans for each local authority and their consideration should be clearly identified in the CER framework rules and not just included as part of Irish Waters strategic plans. The current proposal indicates that planning and development will be catered for in the legislation. I would propose that this is inadequate and in order to be consistent with the long term provision of water infrastructure planning and development should be clearly set out in the CER framework.

Financial support (P51)

CER should not necessarily see or accept the withdrawal of government subvention in the future. I believe CER should be giving consideration to how the government subvention and third party investments can be incorporated into the economic model. The main reason for this is that the financial markets are risk averse and only invest in effectively "risk free" projects. The presence of government funds would give reassurance to the markets, provide funds at a cheaper return if necessary and gives a balance about what can and cannot appear on the government's balance sheet. It would also allow the government to promote economic development and allow for public sector subsidy in scarcely populated areas or adjacent to towns but where CER declare that it is uneconomic for IW to provide or continue to supply water.

Yours sincerely,



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