

APPENDIX 17

Variation to West Mercia Energy Joint Agreement

1. Synopsis

The WME Joint Agreement is to be varied to update the distribution formulae for surpluses each year. The new method ensures that if any Member Authority adjusts their margin independently, the impact is limited to the Member Authority making the change.

2. Summary

- 2.1. Telford & Wrekin Council, together with Worcestershire County Council, Shropshire Council and Herefordshire Council, is one of the member authorities of West Mercia Energy Joint Committee.
- 2.2. The Member Authorities are parties to a Joint Agreement which details the governance arrangements for the operation of the West Mercia Energy business by the Joint Committee and includes the provision that accumulated surpluses identified for distribution are allocated to Member Authorities each year in accordance with the agreed mechanism.
- 2.3. This appendix 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 to ensure an equitable distribution to the Member Authorities.
- 2.4. 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. 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.
- 2.5. At a meeting of the Member Authority's Officers on 5th February 2021 there was a consensus to change the method with effect from the October 2021 distribution.
- 2.6. 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.
- 2.7. The implementation of a change to the WME Joint Agreement requires the consent of all four owning authorities. At the time of writing this report, Herefordshire Council (as the authority most likely to experience a change to their distribution amount under the new formulae) have obtained approval to the amendment set out in this report. Approval of the Cabinets of Telford &

Wrekin Council, Worcestershire County Council and Shropshire Council is being sought.

3. Recommendations

It is recommended that Cabinet:-

- 3.1. Approves that the West Mercia Energy Joint Agreement be varied to amend the formulae for the distribution of the accumulated surplus each year as set out in section 5 of this appendix;**
- 3.2. Delegates authority to the Director of Finance & H.R. after consultation with the Cabinet Member for Finance, Governance & Customer Services to finalise and approve the execution of the deed of variation to the Joint Agreement.**

REPORT

4. Background

- 4.1. The current distribution method was set up on the basis where all Member Authorities adopt the same margin approach. Should an individual Member Authority decide to take a different approach to the others in their purchasing arrangements with WME, then there is a risk that the current distribution formulae may create a detrimental effect on the surplus for the other Member Authorities.
- 4.2. A change to the distribution formulae will assist in ensuring that the profit sharing by the Member Authorities is equitable and will better reflect the decisions of individual Member Authorities in respect of their margin approach to purchasing. Under the new distribution formulae a change of approach by one Member Authority compared to the others would now only impact that Member Authority making the change and will not impact the other Member Authorities and therefore protect them from the risk under the current distribution method.
- 4.3. Under the new distribution method there is little impact on Telford & Wrekin Council. Telford & Wrekin's effective rate under the current method for the surplus generated in the Financial Year 2019/20 was 25.12% and under the proposed revised method would be 25.23%.

5. Financial Implications

- 5.1. The current Joint Agreement (revised following the sale of the West Mercia Supplies stationery supplies business in April 2012) includes a distribution formula that provides for each Member Authority to receive:
 - a) a percentage share of the surplus for distribution arising from transactions with the Member Authorities calculated in accordance with the percentage of the gross profit generated by the receiving Member Authority's transactions with WME during the relevant financial year; and

- b) 25% of the surplus for distribution generated by transactions with non-Member Authority customers during the relevant financial year.

5.2. The proposal to amend the Joint Agreement would involve the distribution formulae being revised to the following:

5.3. “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.”

5.4. Under the new distribution method (using figures from the Financial Year 2019/20 distribution of surplus) there is little impact on Telford & Wrekin Council as demonstrated in the table below:

	Current Distribution Method	Revised Distribution Method	Change
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
Total	£1,110,717	£1,110,717	£0

6. Information

- 6.1. Shropshire Council, Worcestershire County Council, Herefordshire Council, and Telford & Wrekin Council have for many years been constituent members of a Joint Committee undertaking procurement activity. Each Member Authority has two voting Members on the Joint Committee. Since April 2012 this business has comprised activity under the name West Mercia Energy (WME) and each of the four Member Authorities have delegated their functions in relation to the procurement of energy and utilities to the WME Joint Committee.
- 6.2. The agreed objectives of the WME Joint Committee, as stated in the Joint Agreement between the Member Authorities, are to maintain effective, efficient and economic arrangements for the purchase and supply of energy and utilities at the request of and to the satisfaction of the Member Authorities and to other public bodies, non-profit making charitable organisations, education providers including Academies and private sector organisations delivering services on behalf of public bodies and such other organisations which may be approved by the Joint Committee.
- 6.3. The Joint Agreement details the governance arrangements for the operation of the West Mercia Energy business by the Joint Committee, including that the Member Authorities are jointly liable in equal shares for any liabilities of the business and it also includes a mechanism for the distribution of accumulated surplus in each financial year.
- 6.4. At a meeting of the Member Authority's Officers on 5th February 2021 there was a consensus to change the method for the distribution of WME's accumulated surplus for the reasons set out in this report with effect from the October 2021 distribution.
- 6.5. It is a decision for each Member Authority to agree to amend the terms of the current Joint Agreement. Each Member Authority will be seeking approval for the proposed changes to the distribution methods in accordance with their own governance routes

7. Additional Information

- 7.1. At the time of writing, Herefordshire Council have gained approval for the amendment to the distribution mechanism in the Joint Agreement as set out in this report.
- 7.2. Shropshire Council and Worcestershire County Council will be seeking approval for the amendment in due course.
- 7.3. If the amendment to the distribution mechanism is agreed by all four Member Authorities, a Deed of Variation will be executed by each Authority to formally amend the Joint Agreement.

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