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CABINET MEMBER DECISION
9 June 2022

WEST MERCIA ENERGY JOINT COMMITTEE – VARIATION TO JOINT AGREEMENT

Relevant Cabinet Member
Councillor A Kent

Relevant Officer
Strategic Director for Commercial and Change, Chief Financial Officer

Recommendation

1. **The Cabinet Member with Responsibility for Corporate Services and Communication approves:**
   - **(a) the amendment to the West Mercia Energy Joint Agreement detailed at paragraph 14 which updates the formulae for the distribution of accumulated surplus each year; and**
   - **(b) the arrangements to finalise and execute of the variation in consultation with the Strategic Director for Commercial and Change and the Chief Finance Officer.**

Introduction

2. This report documents the approval for the Joint Agreement to be varied by updating the formulae for the distribution of the accumulated surplus each year.

3. 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.

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

Executive Summary

5. In 2012, Cabinet granted approval for Worcestershire County Council to enter into a Joint Agreement with Shropshire, Telford & Wrekin and Herefordshire Councils trading as West Mercia Energy (WME). WME now supplies energy on behalf of its partners to public sector organisations across the country.

6. WME is owned in equal shares by Shropshire Council, Borough of Telford & Wrekin Council, Herefordshire Council and Worcestershire County Council. Since 2012, the Council has purchased electricity and gas from WME, which is governed by the Joint Committee arrangement, where two elected Cabinet members from each of the four authorities represent the interests of each owning authority. The administering host authority to WME is Shropshire Council.

7. 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.

8. The accumulated surpluses are distributed in October of each year to the Member Authorities.

9. 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.

10. 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.

11. 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.

12. At the meeting of the Member Authority Key Officers on 5 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 / via appropriate delegation.

13. 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.

14. The Member Authorities propose to amend the terms of the Agreement as set out below – by Deed of Variation. 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 (+ or –) D (+ 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.

15. It is noted that the new distribution method has already been approved by Herefordshire (who's surplus share will fall as a result) and approved by Shropshire and Telford & Wrekin Council's (no material effect). The impact for Worcestershire is positive as it will mean an increase in the share of surplus. All four Authorities must approve the variation to come into force.

Alternative Options

16. 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.

17. 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.

Legal Implications

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

Financial 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:

Table 1. Distribution Example – variation in methods

Council	Current method	Proposed method	Change
Shropshire Council	£274,804	£272,276	-£2,528
Worcestershire Council	£308,268	£335,161	£26,893
Telford & Wrekin Council	£279,031	£280,219	£1,188
Herefordshire Council	£248,614	£223,061	-£25,558
Total of all councils	**£1,110,717**	**£1,110,717**	**£0**

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

Table 2. Distribution Example

Payment Date	£
Oct 20	308,268
Oct 19	206,459
Oct 18	249,825
Oct 17	344,941
Oct 16	610,993

22. It is noted that the size of the surplus is influenced by the size of the margin that Worcestershire County chooses to charge itself.

23. WME's proposed new distribution based on quantum of energy procured through the partnership will thus mean for 2021/22 the Council will gain (£27k), although later years could be lower than the current arrangements due to the streetlighting contract being let outside of WME. However, it is noted that due to the current position regarding energy and WME's position there is unlikely to be a dividend in 2022/23 to protect the surplus and the financial stability of the partnership. The potential impact on years after that is not thought to be significant with the reduction in dividend is likely to be similar to that gained in the 2021/22 distribution, giving a net nil impact over the medium term. There are also options to amend the way we distribute the dividend with our partners to lessen the impact. As such the proposal to change the distribution is supported.

HR Implications

24. There are no HR implications that need to be considered with regard to this report.

Equality Duty Considerations

25. There are no Equality Duty implications that need to be considered with regard to this report.

Risk Implications

26. Any decisions about the future development of the WME business are determined by a Joint Committee upon which Worcestershire County Council is represented by the Cabinet Member for Corporate Services and Communication, and the Commissioning, Procurement and Assets and the Cabinet Member for Adult Social Care, acting upon information from an advisory group comprising of senior officers.

27. 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.

Privacy and Public Health Impact Assessment

28. A Health Impact Assessment has been undertaken with regard to this report and recommendations relating to new a revised surplus distribution to understand the potential impact they can have on Public Health outcomes across the county area.

29. The budget for the amount of surplus received is held corporately and therefore supports the Council's overall budget.

30. Taking this into account, it has been concluded that there are no other specific health impacts as a result of new decisions arising from this Cabinet report.

31. A similar assessment has been undertaken with regard to privacy/data protection and has confirmed that there is no impact anticipated as a result of this report.

Contact Points

Specific Contact Points for this Report

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