



Corrigenda to the company specific appendix that accompanied the Notification by the Water Services Regulation Authority of its determination of Price Controls for Retail Activities and for Wholesale Activities for Thames Water Utilities Limited

24 February 2017

Overview

This publication updates Performance Commitment T1C to reflect changes agreed between Thames Water and Ofwat to the access dates for the Category 2 (Enabling Works) and Category 3 (System Works) and further minor amendments to aid interpretation and enforcement of this performance commitment as a result of the revised Tideway Main Works programme.

Following appointment of the Infrastructure Provider (IP) Bazalgette Tunnel Limited (Tideway), effective 24th August 2015, to construct the Thames Tideway Tunnel, a period of optimisation of the Main Works Programme has taken place between Tideway, the Main Works contractors and Thames Water. The purpose of this optimisation is to reduce the period of build and costs of the construction of the Tideway Tunnel.

A revised programme of works was agreed within an amended Alliance Agreement signed by all parties in June 2016.

Consequently, Ofwat and Thames Water have agreed a revised Performance Commitment T1C from that initially set out in the Final Determination in December 2014. Such an amendment to the original delivery profile of the Category 2 (Enabling Works) and Category 3 (System Works) was envisaged within the original Performance Commitment T1C. These subsequent amendments were provided to ensure that following the optimisation period that Thames Water remains incentivised to deliver its scope of Category 2 (Enabling Works) and Category 3 (System Works) in line with a revised programme.

Set out below are details of the revised Performance Commitment agreed with Ofwat, the original text from the Final Determination is shown first, followed by the revised terms.

On page 253, in the incentive type: financial – penalty only table for:

		Starting level		Committed performance levels			
	Unit	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
PC	Cumulative number of	0	0	0	5	17	24
Penalty deadband	Cumulative number of		0	0	5	17	24
Penalty collar	Cumulative number of		0	0	0	0	0

The final delivery profile will be agreed after the award of the Main Works contracts, once Thames Water has completed the process to optimise the programme.

Read:

The final delivery profile agreed after the award of the Main Works contracts and following the optimisation phase of the programme (completed in June 2016) has been agreed as follows:-

		Starting level		Committed performance levels (Cumulative No of Sites completed)			
	Unit	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
PC	Cumulative number of sites	0	8	10	20	21	23*
Penalty deadband	Cumulative number of sites		8	10	20	21	23*
Penalty collar	Cumulative number of sites		0	0	0	0	0

* As Shad Thames is currently scheduled to be delivered in a subsequent AMP Period it has been removed from the Table reducing the number of sites to be completed in this AMP Period from 24 to 23.

On page 253, in the incentive rates table for:

Incentive type	Incentive rate (status)
Penalty	£3.4 million per site, a year

Read:

Incentive type	Incentive rate (status)
Penalty	£3.4 million per site, a year. (Applied on a pro rata month by month basis).

On page 253, in the additional details table for:

Necessary detail on measurement units	<p>Thames Water will monitor the extent of programme delays.</p> <p>To monitor the delivery of T1C, Thames Water will publish details from Appendix 5 annex 4 – Detailed information on construction activities (submitted on 27 June 2014), setting out the category 2 and 3 activities by year and providing further site-specific details for example, when the site needs to be vacated for the IP to begin work. Costs and details of category 1 works have been redacted from the published document for reasons of commercial confidentiality. This delivery profile is currently subject to change as it undergoes a process of optimisation. The final delivery profile will be confirmed no later than the award of the IP contract.</p> <p>Following an assessment of special cost claims across all companies and having applied a consistent approach for incentives relating to special cost claims across all companies that recognises the benefits foregone if companies do not deliver, we have increased the value of the penalty from the draft determination and penalties will be incurred at each site for each year of delay.</p> <p>The proposed ODI is the primary regulatory mechanism for incentivising Thames Water to undertake its construction activities on the TTT in a manner that meets the expected timetable for the project. Thames Water is currently in discussions with stakeholders about the development of an Alliance Agreement for the TTT project, and the company expressed concerns in its representation that the agreement could result in double jeopardy and distort incentives.</p>
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	<p>To the extent that Thames Water is able to demonstrate that double jeopardy has occurred for the element of the Alliance Agreement that is specific to the delay of the construction sites to which this ODI relates, Thames Water may request that we net off the penalty incurred through the Alliance agreement from this PC.</p> <p>Ofwat will receive regular reporting on the Alliance Agreement via the Liaison Committee, and therefore expects to have some degree of oversight of penalties under this agreement. These reports will be assessed by the independent technical assessor; and the Alliance Agreement. Alliance objectives and alliance commitments may not be changed without Ofwat's consent. We will make an assessment at PR19 of any information put forward by Thames Water.</p> <p>We have intervened to introduce a mechanism to recover costs for customers in the event of non-delivery of category 2 and 3 works if Thames Water does not undertake the project. The maximum amount recovered will equal the agreed expenditure for the work (£227 million), and will enable the costs to be passed back to customers in circumstances where the work has been cancelled for reasons outside of the company's control.</p>
<p>Frequency of PC measurement and any use of averaging</p>	<p>PC reported at the end of each financial year and reviewed through independent assurance process.</p>
<p>Timing and frequency of rewards/penalties</p>	<p>Penalties will be calculated annually and applied to the total five-year position in 2015-20 as part of PR19.</p>
<p>Form of reward/penalty</p>	<p>RCV adjustment</p>

Any other information or clarifications relevant to correct application of incentive

The penalty rate is based on our view of the annualised average incremental cost per site of the category 2 and 3 works uplifted with estimate of infraction fines (in respect of financial sanctions that the European Court of Justice could apply in the context of infringement proceedings against the UK) as proxy for benefits foregone.

The delay penalty will apply to each site for each year of delay. This results in an incentive penalty per site of £3.4 million a year. In the event that all sites were delayed until 2020-21, the maximum incentive penalty would be £156 million.

As set out above, any site-specific penalties for delays incurred in 2015-20 by Thames Water, specifically relating to its activities, through the Alliance Agreement may be netted off against the penalty incurred through the ODI, subject to sufficient regulatory oversight.

Read:

Necessary detail on measurement units

Thames Water will monitor the extent of programme delays.

To monitor the delivery of T1C, Thames Water will publish an update on its website of the above delivery profile, setting out the cumulative Enabling Works (category 2) and System Works (category 3 activities) completed each year.

Thames Water have provided further site-specific details in relation to each site including the specific dates when the site needs to be delivered or made available for the Tideway to begin work to both Ofwat and Tideway in agreeing this revised profile.

Delivery or completion of the Thames Water scope of works on the individual sites shall be established by handover of the site to Tideway. If Tideway does not accept handover of a site, Ofwat will determine whether the Thames Water scope of works may be reasonably considered to have been completed. Where Tideway will not occupy a site, then completion of the scope of works within the agreed Thames Water scope will establish the reference point for site completion.

	<p>Following an assessment of special cost claims across all companies and having applied a consistent approach for incentives relating to special cost claims across all companies that recognises the benefits foregone if companies do not deliver, Ofwat have increased the value of the penalty from the draft determination and penalties will be incurred at each site for each year of delay. The application of these penalties have been further revised below.</p> <p>This ODI is the primary regulatory mechanism for incentivising Thames Water to undertake its construction activities on the Thames Tideway Tunnel in a manner that meets the expected revised timetable for the project.</p> <p>Thames Water expressed concerns in its initial representations that the Alliance Agreement for the TTT project could result in double jeopardy and distort incentives. The final Alliance Agreement does not contain any penalties for Programme Incentives (only cost incentives) and so the question of double jeopardy does not arise in respect of access dates.</p> <p>Ofwat will receive regular reporting on the Alliance Agreement via the Liaison Committee, and therefore expects to have some degree of oversight of penalties under the Alliance Agreement. These reports will be assessed by the independent technical assessor; and the Alliance Agreement. Alliance objectives and alliance commitments may not be changed without Ofwat's consent. Ofwat will make an assessment at PR19 of any information put forward by Thames Water.</p> <p>Ofwat have intervened to introduce a mechanism to recover costs for customers in the event of non-delivery of category 2 (Enabling Works) and 3 (System Works) works if Thames Water does not undertake the project. The maximum amount recovered will equal the agreed expenditure for the work (£227 million), and will enable the costs to be passed back to customers in circumstances where the work has been cancelled for reasons outside of Thames Water's control.</p>
<p>Frequency of PC measurement and any use of averaging</p>	<p>PC reported at the end of each financial year and reviewed through independent assurance process.</p>
<p>Timing and frequency of rewards/penalties</p>	<p>Penalties will be calculated annually and applied to the total five-year position in 2015-20 as part of PR19.</p>

Form of reward/penalty	RCV adjustment
<p data-bbox="204 280 558 430">Any other information or clarifications relevant to correct application of incentive</p>	<p data-bbox="683 280 1385 555">The penalty rate is based upon Ofwat's view of the annualised average incremental cost per site of the category 2 (Enabling Works) and Category 3 (System) works uplifted with estimate of infraction fines (in respect of financial sanctions that the European Court of Justice could apply in the context of infringement proceedings against the UK) as proxy for benefits foregone.</p> <p data-bbox="683 589 1390 922">The delay penalty will apply to each site for each year of delay. The delay penalty shall be calculated on a pro rata month by month basis of £283,333 commencing one month after the end of the month of the date of delivery of the site agreed with Ofwat (in accordance with the revised profile set out above). This results in an incentive penalty per site of £3.4 million a year. In the event that all sites were delayed until 2020-21, the maximum incentive penalty would be £156 million.</p>