

ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE/

ECONOMIC DEVELOPMENT COMMITTEE

Date: Wednesday 15 November 2000

Venue: National Assembly Building

EPT - Committee Room 3, 2.00 to 5.00pm

EPT/EDC - The Chamber, 5.00 to 5.45 pm

Title: **PROPOSED ACQUISITION OF DWR CYMRU CYF BY GLAS CYMRU CYF**

Purpose

1. EPT Committee and EPT and ED Committees meeting jointly are being given the opportunity to consider:

- OFWAT's consultation paper on the proposed acquisition;
- the proposed licence modifications (Appendix A of OFWAT's paper);
- examine representatives from Glas Cymru, OFWAT, Western Power Distribution (WPD) and other interested parties;

and to offer recommendations to Assembly Ministers on the issues.

Recommendation

2. The Committees will wish to seek further details and assurances on the Glas Cymru proposal with particular reference to the risks and benefits to customers, the future of the water industry in Wales, and the impacts on the environment, drinking water quality, and on jobs in Wales. The Committees will wish to consider their responses and/or recommendations in relation to the matters raised in the OFWAT consultation paper.

Timing

3. The Glas Cymru proposals were announced on 3 November. The OFWAT consultation paper was issued on 10 November and asks for responses by 18 December.

Background

4. The Boards of Glas Cymru and WPD announced on 3 November that they had agreed in principle on terms for Glas Cymru to acquire Dwr Cymru from WPD. Details of the proposals are set out in papers which have already been circulated to ED and EPT members. Some of the main features are:-

- Glas is an independent company incorporated and based in Wales;
- It is a company limited by guarantee and is owned and controlled by members who will not receive dividends;
- Under the constitution of the company, any profits will be re-invested for the benefit of Dwr Cymru, its customers and the environment;
- Under Glas's ownership Dwr Cymru will outsource under competitive contract its day to day operation of assets and provision of customer services to commercial service providers;
- It is planned to finance the acquisition by means of low-cost long-maturity bonds.

5. There were some press reports, subsequent to the Glas announcement, of a potential or actual bid from Nomura to acquire Dwr Cymru. It was subsequently confirmed that Nomura had not made a bid for Dwr Cymru in opposition to the Glas Cymru proposals. Nomura indicated that they were still interested in various parts of the former Hyder group, including Dwr Cymru, and that if the situation changed Nomura's position may also change.

6. The First Minister and Environment Minister have met with directors of Glas Cymru. Contrary to press reports they have not offered support for the proposal. It raises important and complex issues which require consideration. The OFWAT consultation paper helpfully addresses these main issues.

Consideration

6. In examining the Glas Cymru proposals the Committees will wish to note the issues for consideration raised in the OFWAT consultation paper. These are not reproduced here, but are summarised at paragraph 11 of the OFWAT paper (pages 5 and 6).

7. Other aspects which the Committees may wish to take into account are:-

- In previous considerations of the competing bids for Hyder the Assembly has sought to avoid focusing on the merits of individual businesses, and concentrated on the merits of the bids put forward. In the case of the Glas Cymru acquisition, this is a private sale of Dwr Cymru by its current owners WPD (WPD acquired the Hyder Group earlier this year);
- The proposal can be distinguished from the mutual model brought forward by Kelda (owners of Yorkshire Water) earlier this year. It is a company limited by guarantee and owned by appointed members; not, as in the case of Kelda, a mutual company owned by customers;
- As a company financed by debt, with no equity cushion, there will be risks to customers, as well as potential benefits arising from lower financing costs (OFWAT's preliminary analysis of the proposals is set out at paragraphs 12-15 of its paper (page 6). Glas Cymru will be a private company, privately financed, and subject to the regulatory and price control systems applying to other water companies in England and Wales;
- The proposal is not comparable to public ownership;
- If the company is to raise finance at favourable rates of interest city institutions will need to be

satisfied it is being run efficiently, and not as a cosy monopoly;

- This is a proposal developed in Wales and the directors are committed to retaining the headquarters functions in Wales. This involves some 120 staff currently employed by Dwr Cymru who will transfer to Glas;
- The day to day operations (currently 1200 staff employed by Hyder Operations) and the customer services provisions (420 staff, including IT support, currently employed by Hyder Services) will be outsourced, with periodic re-tendering. Thus it cannot be guaranteed that these staff will continue to be employed by a Welsh-based company. Whoever wins the operations contract will need a capacity in Wales. That need is less with respect to customer service functions.
- It would not be appropriate for the Assembly to be represented on the membership of Glas Cymru. By virtue of its statutory and regulatory responsibilities in relation to the water industry generally and Dwr Cymru in particular, and its responsibility for determining the environmental investment programme, the Assembly should remain independent from the ownership and control of Glas Cymru. Membership by the Assembly might suggest political engagement in its policy which could inhibit the Company's ability to raise finance on attractive terms, a key element of the proposal.
- As the Committees have previously been advised when considering the Nomura and WPD bids for Hyder, the Assembly has a power under section 13 of the Water Industry Act 1991 which is described in para 9 below. Contrary to media reports this is not a power of veto of a bid and is subject to defined conditions related to the purposes of the Water Industry Act and not to wider aspects. The OFWAT consultation paper has set out its proposed licence modifications consequent upon the Glas Cymru acquisition of Dwr Cymru. Were the acquisition to proceed the licence conditions would be subject to separate (statutory) consultation.
- The issues need to be considered from a long-term perspective. Will this type of corporate structure be better able to deliver water and sewerage services for customers than a profit-driven company? What are the relative benefits and risks?

Compliance

8. The Assembly has no statutory role in determining this acquisition other than described in para 9 below. The Assembly can clearly represent its views in response to the OFWAT consultation.

9. The Assembly has a power under section 13 of the Water Industry Act 1991 to direct the Director General of Water Services not to make modifications which he may propose to the conditions of a water company's appointment. This power of direction is subject to defined conditions set out in section 13(5) of the Act. If the Assembly used the powers of direction in relation to section 13(5)(c) of the Act, the Director General would have to consider whether he wished to pursue his proposals by way of a reference to the Competition Commission under section 14 of the Act.

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