

Unite The Unions Response to Ofwat's Notice of Their Provisional Decision to Accept Undertakings From Thames Water Utilities Limited (TWUL) For The Purposes Of Section 19 of The Water Industry Act 1991



1. Introduction

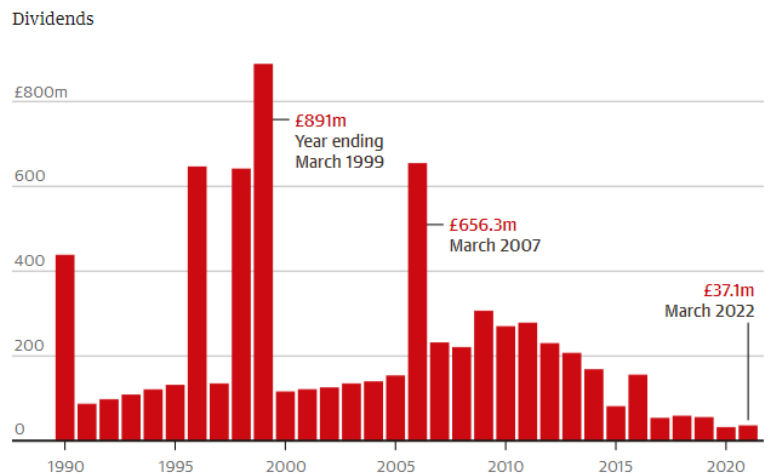
- 1.1. This submission is made by Unite, the UK's largest trade union with over one million members across all sectors of the economy, including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not-for-profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.
- 1.2. Of particular interest to this consultation Unite represents over 30,000 members in the Energy & Utilities sector many of whom are employed directly by Thames Water. As (TWUL) also covers an area which covers around a quarter of England's population, a high number of members have no choice but to be customers of TWUL. Thames is also the supplier of fresh water to all of the industries in the London area where members work and consequently are tied to the fortunes of this company in several ways.
- 1.3. The commitments that are the subject of this consultation are built around four elements.
 - The appointment of an independent Monitor to report on the company's progress, including against its transformation plan. The independent Monitor will report back to Ofwat frequently and be entitled to access to company information.
 - Developing and delivering a suitable operational business plan to achieve turnaround.
 - Taking the steps required to deliver an equity raise.
 - New non-executive director board appointments
- 1.4. Given the above it is difficult to see how the presence of an independent monitor to report on the company's progress, on how they would have advised Thames differently, regarding the debt management of their debts. Unite therefore feels these proposed measures are not just shutting the door after the horse bolted but adding a padlock to the door after the stable block has burnt down. Unite was under the impression that the role of financial ombudsman of the water companies to protect the consumer was the role of Ofwat, to prevent the individual area monopolies from ending up in this situation in the first place rather than convening another level of bureaucracy to carry out the role of Ofwat at a more hands on level.
- 1.5. Since the privatisation of the water industry in 1989, Thames has been battling to overcome the legacy of Victorian era plumbing which covers the capital and importantly the treatment of the waste water produced by an ever-growing population. In 1989 there were 6.784 million living in the Greater London area which has grown to an estimated 9.345 million today a 37.75% increase, yet the number of waste water works within the M25 has not increased beyond the 8 that Thames inherited back in 1989 although these have expanded, with the addition of a desalinisation plant in Beckton, real change will not happen until the Thames Tideway is opened. While the funds for the tideway are collected by TWUL these funds are only passed on to the developers of the tideway, but this is not due to open till next year (2025).
- 1.6. Despite the challenges that TWUL has faced, its owners have repeatedly failed to reinvest in the network to meet that growing demand, its executives, the shareholders and private equity companies who own have added to the challenge by presided over decades of underinvestment, aggressive cost-cutting and huge dividend payments often funded out of additional loans.
- 1.7. The privatisation of the water industry in the UK was a mistake driven by the ideology of the UK government at the time, that business knows best. The industry is from Unites calculations now in excess of £70 billion in debt with the figure growing by the day. This privatisation like so many has resulted in an industrial activity that was profitable under government ownership ending in a sector

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which has become broken and in the case of the water industry caused pollution that is polluting rivers and making the users over our natural resources ill.

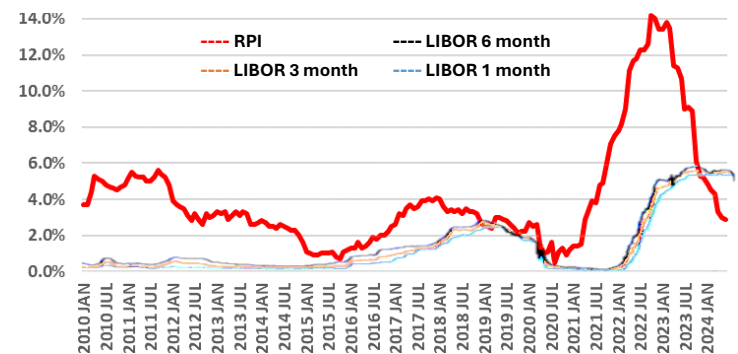
1.8. Ofwat - the body who was supposed to be the regulator of this industry, who by law was meant to be the public's guardian against exploitation, is very much to blame for this state of affairs. Instead of overseeing a new era of investment, improved water quality and low bills saw the industry turned into a cash cow for private equity companies and investment firms. Why did Ofwat not stop Sir Robert Clarke (the then Chairman of Thames Water) approving Australian infrastructure asset management firm Macquarie and its co-investors, plans which tripled the debts of Thames Water from 3.2 billion in 2006 to £10.5 billion in 2017?

Thames Water dividend payments total £7.2bn over 32 years



Source - Thames Water Utilities Limited, dividend payouts by year company reports 1990 to April 2022. Numbers not adjusted for inflation. note between 2001 and 2006 the year end moved from April to December, but this returned to April in 2007. [Graphic from Guardian Group newspapers](#)

1.9. As a result, by the end of the most recent financial year TWUL reported total assets of £23,907.5 million and total liabilities of £22,128.3 million with many of the debts payable based on the London Inter Bank Offered Rate (LIBOR), which as you can see from the graph has gone from a pre pandemic peak in late 2018 of less than 3% to below 0.3% from around the end of May 2020 until late 2021 and into 2022 where it has climbed to over 5.5%. Additionally, many of the debts were based on the retail Price Index (RPI) which, due to a disastrous mini budget by the short-lived Liz Truss premiership, climbed from 4.9% in September 2021 to a high of 14.2% by October 2021. As many of the large debts of Thames Water were based on RPI the move to what looked like a safe bet and based loans on LIBOR. Whilst this may have been seen to be a good move at the time RPI was at 2.9% last month while LIBOR has remained around 5.5%. This is leaving the company struggling to pay the interest on its debts, let alone reduce their debts and manage the growing demand for supplies of fresh and the treatment of waste.



Source: the [Office of National Statistics](#) and [Global Rates.com](#)

1.10. Unite remains unconvinced that these changes will overcome the liabilities that are now in excess of £15.2 billion and instead calls for the company to be renationalised, leaving the debts to be recovered wherever possible from those who so unjustifiably withdrew it including the likes of the Macquarie and its co-investors.

1.11. Unite do not feel it is appropriate to have an independent monitor interfering in industrial relations especially because it has been the employees of TWUL that have born the brunt of the industrial mismanagement. They have been asked to deliver not just their own job but the roles of others too when TWUL cut staffing levels to save money. Unite believe that protecting the terms and conditions of workers is essential to ensure not just the retention of staff and their fair treatment but also for maintaining high levels of staff motivation and productivity.

1.12. Unite would strongly suggest that Ofwat considers the impacts of their other proposals that are currently out for consultation.

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- 1.13. Under Ofwat's PR24 Draft Determination proposals they are suggesting an increase in fines for poor performance. Given how tight the budget will be at TWUL, such fines could easily lead to further job cuts and a lack of funding for skills development. Given the judgement in *The Manchester Ship Canal Company Ltd v United Utilities Water Ltd*¹, the Supreme Court has already opened the door to increased fines. The judgement means that water companies cannot hide behind the Water Industry Act 1991. The court ruled that the Act does not prevent any applicant from bringing a claim of nuisance or trespass when they suffer a from the detrimental impacts of discharges of foul water from United Utilities' or any water companies' outfalls. This judgement will provide a method where every user of the Thames, be it a small canoeing club, wild water swimmer or commercial interest who becomes ill or a detriment can bring a case against water companies. For TWUL in its current state, this could result in further attacks on staffing levels to help pay the fines.
- 1.14. The populous of TWUL's workforce, just like the rest of the economy, is heavily reliant on workers who in 25 years should hopefully be enjoying retirement. There needs to be a forum where these skilled workers can empower the next generation with their knowledge of the industry.
- 1.15. Proposals to make plans for a 25-year recovery plan, therefore, under Ofwats PR24 Draft Determination², do not make provision for the impact of climate change over this period. Next years UNFCCC COP 30 in Brazil and subsequent 5 yearly reviews. These stocktakes determine how the world is doing in its race to net zero and the return to the 1.5°C limit of global warming. Should we be off track, in reaching Net Zero, more stringent measures to reduce emissions may be required and this could include investments into electrolysis to produce or store energy as hydrogen for example. Dependant on the routes employed will determine the volumes of fresh water required and if we Thames or others need to invest in more desalination beyond that at the Beckton works.
- 1.16. Increasing urbanisation³ and the global temperatures increase in the speed of cloud formation which leads to a greater number of monsoon style deluges of rain and flooding⁴. These deluges currently overwhelm the waste water system and either result in the delivery of untreated human waste into rivers or cause toilets to back up and overflow with waste into homes. A separate drainage network is long past due in London to prevent this from happening, but this is something that is clearly beyond the financial capacity of TWUL and should be called for by not just the water companies but also Ofwat on their behalf if it is to be the guardian of the consumer. The Thames Tideway is supposed to help with this, but there are doubts over how long it will be before that too is overwhelmed⁵. Climate change is also putting the potential of a catastrophic flooding of the capital into the realms of reality due to sea level rises and storm surges which may flood over the top of the Thames barrier or the smaller breaches in the sea wall to that point. These and any number of issues could therefore disrupt a 25-year recovery plan, and hence Unite strongly suggests that there are a series of dispensations from this lengthy period of restraint to help TWUL turnaround from this downward spiral.
- 1.17. Unite welcomes Ofwat's strategy to increase spending from £59 billion in 2020-2025 to £88 billion in 2025-30, as this demonstrates a strong commitment to enhancing infrastructure. Unite feels that care needs to be taken to ensure that none of this new investment money is used to clear historic financial commitments of the water companies.
- 1.18. Unite is also troubled that Ofwat is now considering the implementation of plans to open up the marketing of the water industry brokers who can act much in the same way as the energy industry marketing companies, like Octopus, Utility Warehouse, So Energy, 100 Green, etc. who purchase the rights to large volumes of energy for a discount and then sell that energy to domestic consumers. Since April 2017 businesses, charities and public sector organisations could pick and choose their water provider rather than be limited to the monopoly supplier in their area, under the misguided ideology of

¹ *The Manchester Ship Canal Company Ltd (Appellant) v United Utilities Water Ltd (Respondent) (No 2)* [2024] UKSC 22 On appeal from [2022] EWCA Civ 852

² [Ofwat draft determination page](#)

³ See this link to [GCSE Geography questions on flood risk](#)

⁴ See the [Guardian article from July 2021](#)

⁵ See [article on the Thames Tideway](#). Even Thames Tideway owners admit that this is just a sticking plaster to buy the capital time to do something more intelligent with its rainwater.

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the last Conservative government⁶. Such a move to allow domestic customers the same option would for TWUL, be a death nail, as it would increase the level of indirect customers and mean the only way to compete would be if they reduced retail prices. The opening up of the markets in this way add a middle man who will want to make a profit at the expense of the incumbent water supplier. So many such middle men in the energy industry have gone to the wall leaving debts⁷ for the incumbent, that one would have thought that the government would learn the folly in such activities. As such Unite would have thought that lessons would be learnt that increased competition is not a good idea if the plan is to help Thames survive.

- 1.19. Unite hopes that TWUL can be salvaged but if not then they need to end the uncertainty over their future. Such uncertainty will hamper recruitment and retention of skilled staff who may be ready for more job security elsewhere. Without these skilled staff, the service provided by TWUL will go into freefall no matter what edicts come out from Ofwat. Unite therefore strongly suggest that Ofwat consider the impact on staffing of their actions.

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⁶ See a [link to the Ofwat page on this](#).

⁷ See Appendix 1 list of bankrupt energy providers and the number of customers impacted each time.

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Appendix 1 List of bankrupt energy suppliers since 2016

Date	Failed supplier	Customers	Acquiring supplier
Dec-22	Bulb*	1,500,000	Octopus Energy
Jul-22	UK Energy Incubator Hub	3,000	Octopus Energy
Feb-22	Whoop Energy	262	Yu Energy
Feb-22	Xcel Power	274	Yu Energy
Jan-22	Together Energy Retail Ltd.	176,000	British Gas
Dec-21	Zog Energy	11,700	EDF
Nov-21	Ampower UK Ltd.	2,000	Yü Energy
Nov-21	Bluegreen Energy	5,900	British Gas
Nov-21	CNG Energy Ltd.	41,000	Pozitive Energy
Nov-21	Entice Energy Supply Ltd	5,400	Scottish Power
Nov-21	MA Energy Ltd.	300	Smartest Energy Business Ltd.
Nov-21	Neon Reef Ltd.	30,000	British Gas
Nov-21	Omni Energy Ltd.	6,000	Utilita
Nov-21	Orbit Energy	65,000	Scottish Power
Nov-21	Social Energy Supply Ltd.	5,500	British Gas
Nov-21	Zebra Power Ltd.	14,800	British Gas
Oct-21	Colorado Energy	15,000	Shell Energy
Oct-21	Daligas	9,000	Shell Energy
Oct-21	GOTO Energy	22,000	Shell Energy
Oct-21	Pure Planet	235,000	Shell Energy
Sep-21	Avro	600,000	Octopus
Sep-21	Enstroga	6,000	E.ON Next
Sep-21	Green	350,000	Shell
Sep-21	Igloo	180,000	E.ON Next
Sep-21	Moneyplus Energy	9000	British Gas
Sep-21	People's Energy	350,000	British Gas
Sep-21	PFP Energy	80,000	British Gas
Sep-21	Symbio	50,000	E.ON Next
Sep-21	Utility Point	200,000	EDF
Aug-21	HUB Energy	15,000	Eon Next
Jan-21	Green Network Energy	367,500	EDF
Jan-21	Simplicity Energy	50,000	British Gas Evolve
Dec-20	Yorkshire Energy	74,000	Scottish Power
Oct-20	Tonik Energy	130,000	Scottish Power
Sep-20	Effortless Energy	2,500	Octopus
Mar-20	Gnergy	9,000	Bulb
Dec-19	Breeze	18,000	British Gas
Oct-19	Toto	134,000	EDF
Oct-19	Uttily (Rutherford)	280	Total gas and power
Sep-19	Eversmart	29,000	Utilita
Aug-19	Cardiff Energy Supply Ltd	800	SSE

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Date	Failed supplier	Customers	Acquiring supplier
Aug-19	Solarplicity	8,000	EDF
Mar-19	Brilliant	17,000	SSE (currently SSE OVO)
Jan-19	Economy Energy	237,000	OVO
Jan-19	Our Power	32,000	Utilita
Dec-18	One Select	33,000	Together Energy
Nov-18	Extra Energy	108,000	Scottish Power
Nov-18	Spark Energy	290,000	OVO
Oct-18	Usio Energy	7,255	First Utility (currently Shell)
Jul-18	Iresa Energy	95,000	Octopus Energy
Jul-18	UK National Gas	80	Hudson Energy
Jan-18	Future Energy	10,000	Green Star Energy
Nov-16	GB Energy	160,000	Coop Energy
Total		5,800,551	

Data provided by Citizens Advice and Ofgem

*Bulb were in special administration from November 2021 when at the time it had 1.7 million customers and considered too big to fail but it eventually collapsed in December 2022

Therefore, when you add the net 200 customers who left Bulb between November 2021 and December 2022 to the mix there have been over 6 million customers impacted by this open competition policy between November 2016 and December 2022 alone.