

PRICE REGULATION OF WATER COMPANIES

REGULÁCIA CIEN VODÁRENSKÝCH SPOLOČNOSTÍ

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I Introduction

Utility companies have among their business licenses also those that do not meet the definition of regulated activities according to Act No. 250/2012 Coll. on regulation in network industries in the energy sector. However, these may also directly or indirectly serve a purpose related to a regulated activity.⁽¹⁾ The foreign tendency to share the costs and benefits of regulated and unregulated activities justifies the need to differentiate them. When evaluating regulated and unregulated activities, it is necessary to take into account in particular, the following legal provisions:

- Constitution of the Slovak Republic No. 460/1992

1 Vrabko (2023)

Coll. (hereinafter referred to as the “Constitution of the Slovak Republic”).

- Act No. 513/1991 Coll. COMMERCIAL CODE (hereinafter referred to as the “Commercial Code”).
- Act No. 442/2002 Coll. on public water supply and public sewerage systems and on amendments and supplements to Act No. 276/2001 Coll. on regulation in network sectors in the public sector (hereinafter referred to as the “Act on Public Water Supply”).
- Act No. 250/2012 Coll. on regulation in network industries (hereinafter referred to as the “Act on Regulation in Network Industries”).
- Act No. 18/1996 Coll. on prices in the public sector (hereinafter referred to as the “Prices Act”).
- Decree of the Regulatory Authority for Network

Abstract (EN)

Price regulation of water utilities is a key tool for ensuring fairness, accessibility and efficiency of water supply for citizens and industry. This article examines various aspects of price regulation in the water sector, including legal frameworks and economic models. The results show that effective price regulation can support investment in infrastructure, improve the quality of services provided and ensure equal access for all residents. The definition of what is regulated and what is not regulated for a particular entrepreneur operating in the network industries is crucial, given the pricing, which is fundamentally affected by the sharing of revenues and costs when these activities occur¹. The aim of the article is to compare approaches to price regulation in network industries, with a focus on the tendency to reduce state intervention in pricing abroad. The aim of the article is to draw attention to the balancing of the right of an entrepreneur in a regulated industry to freely conduct business and the right of the public to a safe and accessible service in the public interest. The author of the article sees no relevant reason for an entrepreneur in a regulated industry to be limited (even indirectly through intervention in pricing) in the performance of unregulated activities.

1 Havlíčková, Kovářová (2013)

Abstrakt (SK)

Regulácia cien vodárenských spoločností je kľúčovým nástrojom na zabezpečenie spravodlivosti, dostupnosti a efektívnosti zásobovania vodou pre občanov a priemysel¹. Príspevok skúma rôzne aspekty regulácie cien vo vodnom hospodárstve vrátane právnych rámcov a ekonomických modelov. Výsledky ukazujú, že efektívna regulácia cien môže podporiť investície do infraštruktúry, zlepšiť kvalitu poskytovaných služieb a zabezpečiť rovnaký prístup pre všetkých obyvateľov. Definícia toho, čo je regulované a čo nie je regulované pre konkrétneho podnikateľa pôsobiaceho v sieťových odvetviach, je kľúčová vzhľadom na tvorbu cien, ktorá je zásadne ovplyvnená rozdelením výnosov a nákladov pri týchto činnostiach¹. Cieľom článku je porovnať prístupy k regulácii cien v sieťových odvetviach so zameraním na tendenciu znižovať štátne zásahy do tvorby cien v zahraničí. Cieľom článku je upriamiť pozornosť na vyváženie práva podnikateľa v regulovanom odvetví slobodne podnikáť a práva verejnosti na bezpečnú a dostupnú službu vo verejnom záujme. Autor článku nevidí žiadny relevantný dôvod, prečo by mal byť podnikateľ v regulovanom odvetví obmedzený (aj nepriamo prostredníctvom zásahov do tvorby cien) pri vykonávaní neregulovaných činností.

1 Havlíčková, Kovářová (2013)

Keywords (EN)

regulated activity, economically justified costs, single till, dual till, sharing of commercial values

Kľúčové slová (SK)

regulovaná činnosť, ekonomicky oprávnené náklady, jednotná pokladňa, dvojité pokladňa, zdieľanie obchodných hodnôt

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Industries No. 154/2024 Coll. establishing price regulation in the electricity sector and certain conditions for carrying out regulated activities in the electricity sector in the network sector (hereinafter referred to as “Decree No. 154/2024”).

- Decree of the Regulatory Authority in Network Industries No. 323/2022 Coll., which establishes price regulation of the production, distribution and supply of drinking water through public water supply systems and the discharge and treatment of wastewater through public sewerage systems and certain conditions for the performance of regulated activities in the water management sector in the water sector (hereinafter referred to as “Decree No. 323/2022”).

The legislation does not clearly define grammatically what is meant by regulated activities and activities related to regulated activities. The Act on Regulation in Network Industries in relation to price regulation determines a closed list of activities falling under regulated pricing.⁽²⁾

According to Section 11 (4) of the Act on Regulation in Network Industries:

Price regulation in the water sector is subject to:

- a) production and supply of drinking water through public water supply systems,
- b) production and distribution of drinking water through a public water supply,
- c) drinking water supply through a public water system,
- d) drainage and treatment of wastewater through the public sewer system,
- e) waste water discharge through public sewerage,
- f) treatment of wastewater fed to the wastewater treatment plant by public sewerage,
- g) abstraction of surface water from watercourses,
- h) use of the hydropower potential of watercourses,
- i) abstraction of energy water from watercourses,
- j) connection to the public sewerage system.”

Following the pregnant definition, it is necessary to view regulation from the perspective of its *de jure* definition, but at the same time, other activities that are not strictly defined in Section 11 (4) of the Act on Regulation in Network Industries should also be included among the *de facto* activities subject to a certain form of regulation. These are so-called activities related to regulated activities, otherwise unregulated⁽³⁾.

II Results

2.1 Distinguishing Between Regulated and Unregulated Activities in the Context of Pricing

Within the framework of a systematic interpretation, the distinction between regulated activities and activities related to regulated activities (*de iure* unregulated) can also be understood in connection with the determination of prices for water and sewage⁽⁴⁾.

According to § 2 (3) letter a) of the Act on Prices: “For the purposes of this Act, economically justified costs shall mean actual direct costs and actual indirect costs associated with the functions of production, administration, sales, research and development, including the associated indirect costs, which, given the functions performed, risks and market conditions, would be applied when using the net sales margin method, whereby sales functions, in addition to sales activities, also include activities associated with the promotion, sales mediation and marketing of the products sold.” Lex specialis regulation to which § 2 (3) letter a) of the Act on Prices applies subsidiary, it is contained in § 2 letter e) of the Act on Regulation in Network Industries. The special regulation subsumes under these costs demonstrably and to the necessary extent incurred for the performance of regulated activities, the scope and amount of which are determined by the Regulatory Office for Network Industries (hereinafter referred to as the “ÚRSO”, “office” or “authority”)⁽⁵⁾. In another place, according to § 14 (1) of the Act on Regulation in Network Industries: “The price regulation procedure (hereinafter referred to as the “price procedure”) begins with the delivery of a proposal for the price of goods and related regulated activities and the conditions for their application (hereinafter referred to as the “price proposal”).”

Economically justified costs are subject to the proper consideration of the ÚRSO in the price procedure. According to Section 12 (2) of the Act on Regulation in Network Industries: “The method of implementing price regulation pursuant to paragraphs 1 and 2 shall take into account economically justified costs, economic efficiency and reasonable profit, including the extent of investments that can be included in the price, or economically justified costs and reasonable profit that have been included in the price approved or determined by the Authority. Economic efficiency is understood as a quantity expressing the relationship between inputs expressed in value and their economic effects.”

2 Pekár et al. (2016)

3 Ikrényi, Lahký, Prekop (2017)

4 Bělohávek, Hótová (2008)

5 Ikrényi, Lahký, Prekop (2017)

According to § 40 (1) letter e), f), g), l) of the Act on Regulation in Network Industries: “The Office shall issue a generally binding legal regulation that establishes the scope, structure and amount of economically justified costs and the method of their reimbursement... the date and method of settlement of planned and actual economically justified costs included in the price of the regulated goods provided and the related regulated activities... the scope of investments related to the regulated activity...”

The implementing regulation on the basis of which the ÚRSO proceeds with price regulation is Decree No. 323/2022, which contains a positive and negative definition of economically justified costs. In § 4 (1) of Decree No. 323/2022 regulates a closed calculation of economically justified costs, which includes (under the conditions defined therein), for example:

- reasonable technological costs (letter b);
- personal expenses (letter c);
- rent for the lease of tangible and intangible assets accounted for by the owner and used exclusively for regulated activities (letter h);
- costs of repairs and maintenance of property used to ensure regulated activity to the extent of ensuring the performance of regulated activity in an appropriate amount, except for the costs of technical evaluation of tangible and intangible assets pursuant to a special regulation (letter i);
- operating costs for the implementation and operation of research and development projects related to the performance of regulated activities (letter k).

According to § 4 (7) of Decree No. 323/2022, the following, for example, cannot be classified as economically justified costs:

- sanctions (letter a);
- remuneration of members of the statutory body and other bodies of the regulated entity for the performance of their functions, who are not in an employment relationship with the regulated entity (letter d);
- costs associated with the preparation and provision of unrealized investment construction (letter aa);
- costs for advertising or promotion carried out in the form of sponsorship of sports, cultural, entertainment events, and other activities (letter ad);
- costs incurred for the procurement of materials, services, and for activities unrelated to the performance of regulated activity (letter al).

A levy on revenue from regulated activity pursuant to Act No. 235/2012 Coll. on the Special Levy on Business in Regulated Industries and on the Amendment and Supplementation of Certain Acts, as amended (hereinafter referred to as the “Act on the Special

Levy on Business”), is not considered an economically justified cost and cannot be a reason for increasing the regulated price.

The ÚRSO, in its guidelines for submitting actual data for regulated activities for 2023 from April 2024 (hereinafter referred to as the “ÚRSO guidelines from April 2024”), establishes examples of so-called other services as economically justified costs. This includes exemplary costs such as postage, telephone, travel, office rental costs, car rental costs, mowing, and others. Payments for wastewater collection and treatment to another regulated entity will also be included here. According to the ÚRSO guidelines from April 2024, only interest on a loan for the acquisition of property used exclusively for regulated activities will be included in eligible costs⁽⁶⁾.

For clarity and comprehensiveness of the interpretation of economically justified costs, understanding the discretionary consideration of the ÚRSO in price regulation pursuant to § 2, letter e) of the Act on Regulation in Network Industries, it is necessary to base it on specific pricing decisions.

In proceedings conducted by the ÚRSO, file number 4014-2024-BA, the office decided on a change (increase) in the maximum price for the production, supply, distribution of drinking water, and the treatment and disposal of wastewater through public sewerage. As part of the justification for the decision of 01.08.2024, he reflected on the increase in operating costs necessary to ensure regulated activities, where he acknowledged the justification for the increase in electricity consumption (technological costs), depreciation, and reasonable profit. It is clear from the nature of the costs that they fall under the category of economically justified costs pursuant to Section 4 (1) of Decree No. 323/2022; electricity consumption costs and depreciation may be included.

In the proceedings conducted by the ÚRSO, file no. 3461-2023-BA of 23. 5. 2023, the office assessed the economically justified costs of the company CHIRANA-PREMA Energetika, s. r. o. and decided that it did not include in the price calculation the supplier repairs in the submitted amount, namely the costs related to the maintenance of the water reservoir, which, compared to previous years, will not be repeated annually in such an amount. ÚRSO also did not recognize the full amount of the costs for the reconstruction of the water meter shaft, as these should have been included in assets and depreciated (recognized only to the extent of depreciation).

6 Regulatory Office for Network Industries (2025)

2.2 Foreign price regulation trends

2.2.1 Pricing in the Czech Republic

For comparison, pricing in the Czech Republic is governed by the legislative rules of the Ministry of Agriculture Decree No. 274/2001 Coll. and the Ministry of Finance Decree No. 01/VODA/2022. According to Article 2 of the Ministry of Finance's assessment No. 01/VODA/2022, economically justified costs, reasonable profit and tax under other legal regulations may be reflected in the price of water, unless otherwise provided for. The Ministry of Finance's assessment No. 01/VODA/2022 contains in Article 3 characteristics of economically justified costs, including costs incurred in connection with ensuring the supply of drinking water from the water supply system, or the discharge or treatment of wastewater; without their expenditure, these activities would not be ensured and would not be paid for from other sources (for example, subsidies, sales of other goods). Furthermore, the assessment of the Ministry of Finance No. 01/VODA/2022 lists depreciation as economically justified costs⁽⁷⁾ assets necessary for the supply of drinking water, or the discharge or treatment of wastewater, or demonstrably serving to ensure the smooth implementation of these services. In addition to regulating economically justified costs, the regulation also affects the determination of the amount of rent paid by the operator of a public water supply and/or public sewerage system to its owner. Rent as an economically justified expense must relate to property (infrastructure) used for the performance of a regulated activity.⁽⁸⁾

Rent regulation monitors the availability of sufficient resources for the renovation and development

of infrastructure, as the owner is supposed to create a special-purpose financial reserve from it (a special-purpose financial reserve is similarly created in the Slovak Republic, but without regulating the mechanism for determining the amount of rent). The condition for both compared legal regulations is that rent, as an economically justified cost, is part of the regulated price. The assessment also subsumes fees for wastewater discharge and compensation for property damage under economically justified costs. In Article 4 of the Ministry of Finance assessment No. 01/VODA/2022 contains a negative calculation of economically justified costs.

Unlike the regulation in the Slovak Republic, remuneration for members of the statutory body and other elected bodies is not an economically justified cost only to the extent exceeding the remuneration agreed upon in the contract for the performance of the function or a similar contract (Article 4 letter n)). According to § 4 (7) letter d) of Decree No. 323/2022, remuneration for members of a statutory body or other body of a regulated entity is not considered an economically justified cost, unless this member is in an employment relationship with the regulated entity.

Economically justified costs in determining water and sewage charges, including the method of determining the amount of rent, are further defined in Annex No. 19 to the Decree of the Ministry of Agriculture No. 274/2001 Coll. According to § 35a (7) of the Decree of the Ministry of Agriculture No. 274/2001 Coll.: "As part of the costs for calculating the price for water and sewerage, the processor lists in individual cost items all expected economically justified costs according to the price regulations associated with operating a water supply or sewage system for public use and does not transfer these costs to other activities carried out by the owner or operator of a water supply or sewage system for public use..."

According to § 35b of the Decree of the Ministry of Agriculture No. 274/2001 Coll., the calculation of the price for water and sewage also includes funds for the renovation of water supply and sewage systems according to the financing plan for the renovation of water supply and sewage systems. The costs of repairing infrastructure assets are also subsumable according to Annex No. 19 to the Decree of the Ministry of Agriculture No. 274/2001 Coll.

The price for water and sewage in the Czech Republic is determined by the operator and approved by the owner of public water and/or sewage systems. Price regulation in the Czech Republic is of a substantive nature, with the Ministry of Finance only supervising compliance with the rules for determining prices and reasonable profit. On the other hand, the ÚRSO sets a specific maximum price for water

7 Similarly, the method of applying depreciation within price regulation was addressed by the Supreme Court of Pennsylvania, Case No. 87-1160, in which it was concluded that only assets actually used for the purpose of fulfilling a public service (providing electricity) may be depreciated. Costs incurred by an electricity provider for the construction of power plants that have not yet been put into operation are not considered economically justified costs, even within the context of amortization or depreciation.

8 According to the Decree of the Ministry of Finance No. 01/WATER/2022: "Rent may be agreed upon up to an amount corresponding to the sum of depreciation of the leased infrastructure assets in accordance with legal regulations governing accounting, the owner's costs for repairs and maintenance of the infrastructure assets borne by the owner, overhead costs related to the management and leasing of the infrastructure assets, interest on loans drawn for implementing the renewal plan of the leased infrastructure assets, and a reasonable profit associated with these activities, which also covers the difference between the amount allocated for the renewal of the leased infrastructure assets according to the water and sewer renewal financing plan and the renewal amount included in the above-mentioned components of the lease payment (rent)."

and sewage; the regulation is stricter, and the ÚRSO directly influences the calculated amounts.

2.2.2 Pricing in England and Wales

In general, there is a strong voice in England and Wales for supporting water companies, even to the extent of carrying out unregulated activities. The regulatory authority for England and Wales – Ofwat – has been particularly concerned with the approach to price regulation for a long time in the document “The treatment of regulated and unregulated business in setting price controls for monopoly water and sewerage services in England and Wales – a discussion paper” (hereinafter referred to as the “Discussion paper”)⁹.

It is likely that these non-regulated services will depend on inputs from regulated services, including the use of assets such as pipelines and treatment plants. The price regulation approaches that Ofwat deals with create opportunities and a framework for the provision of services of an unregulated nature, while coexisting with their main regulated activities, with an impact on shared revenues or costs.

In the intentions of the Discussion paper: “We regulate the water and sewer sectors to protect customers who have no choice when it comes to their service provider. However, the industry is evolving, and with it the services it provides. There is a stronger emphasis on complementary and competitive services.”¹⁰

In accordance with the principles of supporting a market economy, there is a trend abroad not to restrict water companies by disproportionate regulation of even those activities that should be governed by a competitive environment. It is likely that there will be increasing interaction between regulated and unregulated activities in the water sector, with deregulation or a milder form of regulation of these services being pursued as a result of the strengthening of the market mechanism.

According to the Discussion Paper: “For this reason, we need to look at why, what, and how we regulate, with particular emphasis on avoiding regulation in areas where it is not necessary. This is in line with the principles of better regulation and our strategy. If we identify areas where we believe regulation should be removed, limited, or changed, we must manage the transition between these areas and those we continue to regulate fully. This is to ensure that customers are protected, fair market functioning is not hindered, and fair outcomes are achieved for everyone.”¹¹

The English Water Regulatory Authority considers regulated activities strictly to be those defined in the company’s license. For the purposes of the UK regulatory authority’s considerations, regulated services are those services from which the income is regulated in some form, regulated by legislation.

A progressive perspective on the coexistence of regulated and unregulated activities is confirmed by the following principles that Ofwat takes into account in the context of further regulation:

- the allocation of costs between regulated and unregulated services,
- the use of regulated assets to provide unregulated services (such as using customer databases to sell unregulated services or using wastewater to process other forms of biological waste),
- the allocation of risk and profit,
- and whether revenues generated from ‘unregulated’ services should be considered when setting prices for regulated services – the SINGLE TILL approach.

The Discussion paper lists individual examples of unregulated activities of water companies that are marginal, but related to regulated activities:

- accounting services,
- industrial waste processing,
- soil survey services,
- services related to recreation and leisure (including fishing),
- plumbing and other similar unregulated water services,
- laboratory services,
- providing central services to other companies within a franchise (or group),
- food waste processing in addition to wastewater treatment.¹²

It establishes the following attributes for classifying an activity as related to a regulated activity:

- the process or technology has natural synergies with regulated activities to such an extent that it does not make economic sense to separate the unregulated activity from the regulated activity,
- any costs incurred for unregulated activities are costs that can be used in the regulated activity,
- the main function of the assets used remains the provision of regulated activities.

The English regulatory authority further lists other income that is not dependent on the regulated price cap and is related to the regulated activity, namely income from:

- unmetered water supplies – cattle troughs, farm taps and other agricultural water points,

9 Ofwat (2025)

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

- unmetered water supplies in cisterns, tankers or risers,
- unmetered water supplies in buildings,
- new connection fees,
- from securing fire hydrants.

The basic methods that Ofwat discusses and evaluates in relation to the revenues and costs of doing business when regulated and unregulated activities operate simultaneously are the so-called “SINGLE TILL” and “DUAL TILL”¹³.

2.2.3 SINGLE TILL

The SINGLE TILL approach (or single-till method) consists in the fact that the price for a regulated activity is conditioned by the revenue from an unregulated activity, as the profit from an unregulated activity is deducted from the expected profit forming the basis of the regulated price. Costs and revenues from regulated and unregulated activities are treated together, leading to full profit sharing. Under this approach, planned revenues from unregulated business are used to reduce the requirement for income to be earned from regulated business. The interplay between regulated and unregulated activities within an undertaking is analogous not only in the network industries but also in other commercial activities which, by virtue of their nature, constitute services of general interest and have a material impact on public safety. Such activities include, for instance, the provision of civil aviation services, which must, on the one hand, adhere to operational safety standards and remain affordable to the public, taking into account the principle of the free movement of goods and services. Simultaneously, it is inherent that these activities represent the exercise of an economic activity, and the undertaking's legitimate interest is to generate profit both from the regulated activity (civil aviation services) and from other unregulated activities (such as retail operations). Under English regulation, the SINGLE TILL revenue and cost approach is applied in determining the maximum cap on airport passenger charges, which is set by the Civil Aviation Authority (CAA). The maximum price cap for airport charges is also determined by the appropriate profit from regulated activities, from which unregulated revenues are deducted (for example, revenues from operating retail or parking cars at the airport), as well as revenues from other unregulated airport services (for example, aircraft servicing, passenger, cargo and baggage handling). The UK Competition Commission (CC) prefers the SINGLE TILL approach to setting airport charges, citing the following reasons:

- It is difficult to separate commercial and aviation facilities. Without commercial revenue from retail (unregulated) operations at the three London airports, revenue from regulated aviation facilities operations would not be generated, which makes sense that they should be considered as a single business.
- Since the successful development of commercial revenues required airlines to provide passenger transport services to or from the airport, the benefits of commercial activities should be shared with airlines and airline users.
- Among other things, it is difficult in practice to allocate investments and operating costs between aviation and commercial activities. SINGLE TILL regulation is practical because of the extent of shared costs between air and commercial services, particularly with regard to the use of terminal buildings.¹⁴

The Civil Aviation Authority highlights the SINGLE TILL approach because it results in a reduction in airport charges, thereby boosting demand. However, the scope of SINGLE TILL must be reassessed in terms of the activities to which it will apply. SINGLE TILL thus distinguishes between unregulated activities that are related to the purpose of the regulated activity and those that are not a so-called by-product of the regulated activity and whose costs are not substantially shared with the costs of the regulated activity. Under this approach, joint cost sharing and the impact on the regulated price therefore only apply to those unregulated activities for which there is a causal link resulting from the regulated activity. Revenues from unregulated activity are expected to grow in proportion to the growing demand for regulated activity. For example, in the case of a regulated airport service and retail outlets (unregulated service), more passengers will result in an increase in unregulated revenues. The opposite conclusion cannot be accepted, namely that there will be an increase in air travel due to an increase in shoppers in retail stores.

This will therefore be the scope of those unregulated activities that are a direct “by-product” of regulated activities. In the SINGLE TILL approach, an unregulated activity is also considered an activity related to a regulated activity, the costs of which are shared with an activity representing another by-product of the regulated activity according to the previous sentence.

Although the cost adjustment between regulated and unregulated activities in England is generally managed by a DUAL TILL mechanism, in the case of water supply to industrial customers, where prices are not subject

13 Ofwat (2025)

14 *Ibid.*

to regulation, a SINGLE TILL approach is applied. Although the supply of water to industrial customers is not a regulated activity, this water is nevertheless drawn from the same sources, treated in the same treatment plants, and distributed to customers through the same mass distribution network. The English regulator acknowledged that DUAL TILL, namely the allocation of costs for regulated water supplies and unregulated supplies to industrial customers, would be arbitrary in this case. As a result, SINGLE TILL is applied, the regulatory authority deducts the revenue from water distribution to industrial customers from the expected regulated revenues, thereby lowering the regulated price.⁽¹⁵⁾

The SINGLE TILL approach makes sense when:

- Are regulated and unregulated activities complementary. If the demand for unregulated services (for example, the demand for laboratory activities related to water analysis) is generated by the demand for regulated services (a monopoly position in water production and supply), the SINGLE TILL approach makes sense.
- There is a large degree of shared assets (costs) across regulated and unregulated activities. If a high proportion of total costs is shared between regulated and unregulated undertakings, this increases the scope for cost misallocation. This may occur, for example, when the provision of unregulated services makes substantial use of assets that are also used to provide regulated services. In these cases, SINGLE TILL can help reduce the importance of proper cost allocation.⁽¹⁶⁾

Cost and revenue sharing in connection with the impact on the level of the regulated price⁽¹⁷⁾ through SINGLE TILL may result in a reduction in the company's interest in conducting unregulated activity.

2.2.4 DUAL TILL and Sharing of Commercial Values

In the DUAL TILL approach (or the two-till method), the revenue from the unregulated activity – the sale of

product A – does not affect the regulated price of product B. There is no scope for sharing costs and revenues between regulated and unregulated activities.

A special approach to looking at the sharing of revenues and costs, which is discussed in the Discussion paper, is the so-called Sharing of Commercial Values. Ofwat cites a specific example of the coexistence of regulated and unregulated activities of a water company, namely the treatment of other organic waste (such as food waste) in addition to wastewater treatment. The treatment of other organic waste cannot currently be considered a regulated activity under English law, as it is not a function or obligation of water utilities. However, water companies are free to dispose of this waste as part of an unregulated activity. The Discussion paper further states: "Sludge is a by-product of the wastewater treatment process that is further treated to reduce its volume and pathogen content. Sewage sludge treatment services (for waste that has arrived at treatment plants via sewers) are currently regulated (although there is potential for deregulation in the future). In addition, there is scope for processing other organic waste (such as food waste) in addition to sewage sludge treatment.

Other organic waste could be mixed with sludge as part of an anaerobic digestion process (which is used to kill harmful bacteria and produces methane gas as a byproduct that can be used to generate energy)."⁽¹⁸⁾

In relation to asset sharing, the English regulatory authority states here: "It is possible that in the case of sludge processing, regulated assets will have a volume reserve that was installed in anticipation of an increase in the output of the regulated activity, but which has not been utilized. There may also be assets that have become unused due to a change in company strategy. This "spare" capacity of regulated assets could be used to process other organic waste. In this case, customers of the regulated business will finance and underwrite the risk associated with the assets that are used to generate unregulated returns. Customers will benefit from this to the extent that some costs would have to be borne regardless of use (such as fixed costs), and these will be involved in unregulated activity. But if there is a mechanism for sharing commercial value between regulated and unregulated activities, this also allows customers to share in the benefits of the commercial value created, using the regulated assets that they financed and in relation to which they bore the risk. Such an adjustment could mean that a portion of any profits generated from unregulated services that use assets funded by revenues from regulated services would be used to offset the revenue requirement in calculating

15 Irish Aviation Authority (2025)

16 *Ibid.* "Economic theory shows that when services share common costs, it is possible to define broad limits (maximums and minimums) of those costs that can be allocated to the regulated and unregulated service, but within these limits, any more precise allocation (required under DUAL TILL) is challenging. It is often true that there is no 'correct cost allocation'." p. 7.

17 However, it is also not excluded that there may be no income from the unregulated activity that could be deducted from the expected income of the regulated activity, and therefore the SINGLE TILL approach will not affect the regulated price (there will be no reduction in it).

18 Ofwat (2025)

price caps. Costs would still be divided between regulated and unregulated activities. Customers of regulated services should therefore not bear the costs associated with unregulated services, although the problem of sharing common costs would remain... Alternatively, it would be possible to adopt some form of revenue sharing that would in fact lie between the single till and dual till approaches... While a profit-sharing approach would require no cost sharing, a revenue-sharing approach would have to involve regulated businesses sharing the costs of unregulated services.”⁽¹⁹⁾

The discussion paper provides an example for comparing profit sharing and revenue sharing within the framework of regulated and unregulated activities and the impact on the level of the regulated price: “The requirement for income from regulated business is £10 million. The cost of the unregulated activity, where assets are to be shared, is £2 million. The income from this unregulated activity is £2.5 million. The profit for the unregulated activity, therefore, amounts to £0.5 million. Under the 50:50 profit-sharing approach, the regulated business income requirement is reduced by £0.25 million, which is half of the profit earned by the unregulated business, giving a revised regulated business income requirement of £9.75 million. Under a 50 : 50 revenue-sharing approach, the revenue requirement for regulated activity would be reduced by £1.25 million, which is half the revenue generated from unregulated activities. However, the total income requirement would have to increase by £1 million, half the cost of unregulated activity, to £11 million. The final effect would be to reduce the income requirement for a regulated business to £9.75 million.”⁽²⁰⁾

Based on the shared assets model, it is clear that foreign countries assume the coexistence of regulated and unregulated activities, while simultaneously adjusting shared profits or revenues. The calculation of the regulated price is based either on the approach where the regulated price is reduced by the income obtained from unregulated activity, or it is reduced by the net profit from unregulated activity. However, when reducing the regulated price by income from unregulated activity, the principle of bearing costs separately for regulated and unregulated activity is used; half of the costs are included in the economically justified costs, i.e., in the total requirement for income from regulated activity.

In addition to reducing the amount of price regulation, resources are saved as assets are shared between regulated and unregulated activities⁽²¹⁾.

19 Ofwat (2025)

20 Ofwat (2025)

21 For example, a company begins producing energy from methane, which is a byproduct of a regulated activity –

III Conclusion

Regulated activities include the supply of drinking water and wastewater disposal, with the price for these services subject to state regulation to ensure fair prices, sustainability and quality of services⁽²²⁾. Unregulated activities, on the other hand, can include a wide range of activities, such as investments in new technologies, commercial services, or other business operations that are not directly under the control of regulatory authorities.

The impact of performing these two types of activities on the regulated price is complex.

Regulated activities must adhere to set standards and approved costs, which may limit flexibility in price developments. Conversely, unregulated activities can generate additional revenues that can allow the water company to invest in infrastructure improvements, thereby reducing the costs of regulated services and contributing to their efficiency.

Currently, it is important to maintain transparency in cost accounting in order to prevent the costs of regulated activities from increasing due to inefficient unregulated investments. The regulated entity determines the procedure for monitoring economically justified costs itself, reflecting specific accounting regulations⁽²³⁾. According to § 4 (4) of Decree No. 154/2024: “If a regulated entity simultaneously performs regulated and unregulated activities or simultaneously performs several regulated activities, only demonstrable costs approved or determined by the Authority shall be included in the economically justified costs of the regulated activity.”

According to comparative legislation, it is clear that the approach is to deliberate and develop unregulated activities of water companies with a simultaneous adjustment of shared revenues and costs and an impact on the regulated price, its reduction (SINGLE TILL). The trend abroad is to support unregulated activities, with the prediction of using inputs from regulated services (including the use of assets, such as pipelines or treatment plants)⁽²⁴⁾.

SINGLE TILL regulation creates space for:

- efficient use of costs (assets), which are used simultaneously for both regulated and unregulated activities, de facto saving resources (for example, the company has one accountant providing HR for employees performing regulated and unregulated activities);

wastewater treatment. A fixed cost that will be used for both energy production and wastewater treatment is the cost maintaining the sewer pipes.

22 Blažo, Kalesná (2012)

23 Tricker (2009)

24 Cameron (2007)

- a positive economic result will serve to financially cover the entrepreneur's more or less profitable activities;
- however, this also requires legislative adjustment of price regulation (reduction of the regulated price), as the overall view of the cash flow of an entrepreneur in a regulated sector (simultaneously carrying out unregulated activities) changes.

The motivation of business entities to perform activities other than regulated ones can have a positive impact on the quality and price of regulated services, as sharing investments and revenues leads to resource saving and the joint use of assets and liabilities. The appropriateness of restricting regulated entities also depends on the constitutional sustainability of public law interventions into the status of an entrepreneur, which is to be preserved⁽²⁵⁾. An entrepreneur should not be unreasonably limited in the performance of any business activity, the basic attribute of which is its autonomy and the achievement of profit pursuant to § 2 (1) of the Commercial Code⁽²⁶⁾.

A balanced approach to regulated and unregulated activities can lead to more equitable and sustainable water management that is not only efficient but also accessible to all residents.

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²⁵ Patakayová (2022)

²⁶ Cangárová (2020)