

Negotiated settlements in UK Airports, Water and Energy: Past, Present and Future?

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25 March 2026

Outline

- Past: RPI-X incentive regulation
- Negotiated settlements in USA & elsewhere
- Present: Responses of UK regulators to the concept of negotiated settlements
- Future: How should UK regulation evolve?
 - Recent settlements in UK and Canada
 - Recent settlements in Germany and Australia

Past: RPI-X incentive regulation

- RPI-X incentive regulation had advantages
 - Guaranteed improvement for customers (except where $RPI+X!$)
 - Reduced uncertainty about future prices for up to 5 years
 - Incentive to efficiency – which was very important at the time of privatisation
- But RPI-X regulation also had downsides
 - Sometimes consumer bodies regarded price, profit and/or X as unacceptable
 - If rate of return was too high, why didn't the regulator intervene?
 - Was RPI-X still appropriate when inefficiency was a lesser concern?
 - Customer bodies & others often critical of assumed costs and investment plans
 - Do competitive industries really take no responsive action for five years at a time, even if market conditions change?

Negotiated settlements in USA & elsewhere

- So I looked to see if there were better regulatory models elsewhere
- In several US jurisdictions, interested parties could negotiate with the utility and propose an agreed price to the regulator
 - Regulator was typically grateful to have the problem solved
 - Normal regulatory process if no settlement agreed
- I found similar approaches used in Canada, Australia, Germany, Argentina and several other countries
- All parties including regulators found this helpful
- So I published a number of papers on these experiences
- And proposed this approach to UK regulators

Present: Responses of UK regulators to the concept of negotiated settlements

- Civil Aviation Authority (CAA)
 - Harry Bush had already developed a similar approach (Constructive Engagement with airlines) in 2007. Different experiences at 3 regulated airports
- Water Industry Commission in Scotland (WICS)
 - From 2011, Alan Sutherland introduced a Customer Forum to engage directly with Scottish Water on business plans & agree a price control. WICS used it successfully for two price control periods
 - Now discontinued, though Consumer Scotland still involved in the new process
- Ofwat and Ofgem
 - Both required water & energy network companies to engage with customer groups and stakeholders to develop business plans
 - Which generally worked well (?)
 - But both regulators reserved the setting of price controls to themselves
 - There were continuing concerns by companies, customer groups and others

Future: How should UK regulation evolve?

- Is efficiency the main issue going forward?
- Increasing environmental concerns & differences of view (net zero)
- Present approach very regulator-centric (& Government-centric?)
- Reduces learning from different approaches by different companies
- Ponderous, responding only at pre-specified multi-year intervals
- Regulation in other countries has continued to incorporate significant elements of negotiated settlement – see 2 attached slides
 - US settlements take less time (by 1/3 to 2/3) than conventional US regulation
 - Companies accept lower Return on Equity in return for certainty & speed
- The process seeks to resolve differences of view by negotiation and agreement
- Settlement processes respond & adapt & learn from others, as markets do
- So why is there such resistance to negotiated settlements in the UK?

Recent settlements in USA & Canada

- USA 2024-5: Texas required System Resiliency Plans, all electric utilities reached settlements (\$bn each)
- USA August 2025: Florida Power & Light reached 4 year settlement for \$6.9 bn (30% cut from initially proposed \$9.8bn), “largest rate hike in US history”
- USA FERC Jan 2025: settlements for operation of reliability plant (& 5 settlements re generation plants)
- USA FERC: staff now propose settlement 3 months after filing, over 90% of cases now resolved this way
- USA 2018: Chicago O’Hare airport expansion plan agreed with airlines \$8.5bn
- USA 2024: Dallas Fort Worth airport expansion plan settled with American Airlines \$4.8 bn
- USA 2024-5: Five major water utility settlements (Missouri, Pennsylvania 2, California 2)
- Canada Sept 2025: Alliance Pipeline & gas shippers reached 10 year agreement on reduced tolls & provision for revenue sharing
- Canada 2024-6: Alberta Utilities Commission (AUC) approved 5 major settlements on energy transmission rates & removed requirement for prior commission approval to start negotiations
- Canada: AUC uses negotiated settlements for 122 private water utilities, halving review time

Recent settlements in Germany & Australia

- Germany: 2024 settlements between consumer organisations and energy companies to resolve inappropriate price increases
- Germany: Jan 2025: Frankfurt Airport 4 year agreement on charges
- Australia: Australian Energy Regulator implementing negotiated settlements approach (NewReg) via a Customer Forum, used for AusNet 2021-5 and later for Distribution Network Providers in Queensland & S Australia
- Australia: charges at major airports set by negotiation between airport operators and airlines
- Australia Murray-Darling Basin (MDB) Reforms (ongoing): A negotiated process creating one of the world's largest water markets, separating water rights from land ownership to allow trading and capping usage to ensure environmental sustainability
- Australia Bulk Water Supply Agreement: Negotiated contracts between Melbourne Water Corporation and retail utilities for the supply, treatment, and transfer of bulk water
- Australia: negotiated settlements central component of 3rd party access to rail network

Session participants

- Harry Bush (formerly Treasury and Civil Aviation Authority)
- Andrew Walker (formerly Ofgem, Ofwat, now Civil Aviation Authority)
- Alan Sutherland (formerly Water Industry Commission Scotland)
- Rachel Fletcher (formerly Ofgem, Ofwat, now Octopus Energy)
- Gavin Knott (formerly Postal Services Commission, now Ofgem)