

Modification Report
Changes to the Reasonable Endeavours Scheme
to better incentivise the detection of Theft
Modification Reference Number 0231V
Version 3.0

This Modification Report is made pursuant to Rule 9.3.1 of the Modification Rules and follows the format required under Rule 9.4.

1 **Background**

At the end of August 2006 the Energy Retail Association (ERA) and the Energy Networks Association (ENA) jointly established a Workgroup to look at how participants in the Gas and Electricity markets might promote the detection, investigation and prevention of energy theft.

The Development Group produced a final proposals document in June 2007, which was submitted to Ofgem. As part of the Workgroup Groups' findings it was agreed that participants are not sufficiently commercially incentivised under the current regime to investigate, detect and prevent theft.

It was agreed that where there are arrangements in place to mitigate the costs of investigating theft, the process is burdensome and does not adequately cover the costs incurred by participants in investigating theft, and in some cases does not cover the administrative costs associated with making a claim.

In their document titled 'Theft of Electricity and Gas – Next Steps – 06/05' dated 17th January 2005, Ofgem stated that;

“The principles behind the Reasonable Endeavours Scheme appear to be sound basis for these arrangements. Under the Reasonable Endeavours Scheme gas suppliers and GTs are currently able to recover gas charges and other defined costs where they have undertaken reasonable endeavours to recover these from the customer but have failed to do so.”

It is our belief that, while the current regime provides a sound basis, the level of compensation available to shippers through the Reasonable Endeavours Scheme is insufficient to incentivise increased Shipper activity to identify theft.

Furthermore, the current regime provides a perverse incentive whereby Shippers who are actively engaged in the detection of theft are exposed to the full cost of the Energy they notify as stolen, often with little chance of recovering these costs from the end user.

Whilst the Reasonable Endeavours Incentive Scheme offers Suppliers the opportunity to recover some of their costs in investigating theft, the level of compensation available does not provide sufficient incentive.

Furthermore, the Reasonable Endeavours Incentive Scheme is operated outside of the Uniform Network Code arrangements, which we believe contributes to a lack of understanding and clarity, on the part of Shippers, around the process.

Proposal

The current process is administered by the Transporters agency out side of any formal Governance arrangements.

1. Governance

There are currently two different documents relating to the Reasonable Endeavours scheme which will be affected by this modification; the Reasonable Endeavours Allowances Scheme (otherwise known as the Designation, see Appendix Two for the current document) and the Reasonable Endeavours Scheme and Guidance (see Appendix Three for the current document).

This proposal requires the obligations existing under sections four, five and six, and the subsequent table (entitled “Table 1”), of the Reasonable Endeavours Allowances Scheme (Appendix Two) produced by the Transporters under their licence and designated by Ofgem, to be incorporated within the Uniform Network Code document, thus creating an appropriate governance framework in which it can continue to operate.

Pages one and two, and sections one, two and three of the Reasonable Endeavours Allowances Scheme (Appendix Two) will remain outside of the Uniform Network Code and be retained by Ofgem.

Furthermore, this change will delete paragraph 4(ii)(aa) from page four of Appendix Two. Following discussions with Ofgem it is considered that this paragraph is too broad, and that 4(ii)(bb) suffices.

In addition, and in order to improve both the clarity and transparency of the Reasonable Endeavours Scheme, this proposal also requires a new UNC Related Document to be created. The content of this document would be the guidance contained within the Reasonable Endeavours Scheme Document, pages three and four in the attached Appendix Three, produced by Transporters. For clarity, the guidelines contained at the end of this document, on pages five and six, will remain outside the Uniform Network Code, and hence will not be subject to Uniform Network Code processes or governance.

It is proposed the new UNC Related Document will only be amendable by the raising of a Modification Proposal and consequently the application of the Modification Rules.

2. Claim Levels

The Reasonable Endeavours Scheme provides a sound framework, which if developed upon, could create a robust incentive mechanism.

However, it is widely accepted that that the current levels of compensation payable under the Reasonable Endeavours Scheme do not provide sufficient incentive upon all Shippers to detect theft.

Under the existing scheme, for some claim types, Shippers are able to make claims under the scheme to recover their actual costs without a limit to the value able to be claimed: this proposal would not change this.

In order to provide adequate incentives, the level of compensation available to Shippers under each claim type has a ‘capped’ or fixed limit which would be extended to a maximum of £1000 in each case under this proposal.

The Scheme, in some circumstances, allows for Shipper to make claims under more than one claim type. This proposal would not change this and the combinations of claims allowed under the scheme per incident would remain as

they are in the current arrangements.

For clarity this proposal does not amend or introduce an overall limit to the value of a claim.

Under the existing scheme, where a maximum claim value or ‘capped limit’ is set, the maximum value refers to claims for a specific charge type and does not set a limit for the overall claim value.

Where Shippers have incurred costs under multiple claim types, they are able to claim up to any capped value under each claim type with no overall limit set.

The existing scheme sets out which combinations of claim type can be used for a single incident. These ‘valid claim combinations’ would be replicated under this proposal.

The maximum permitted claim values are set out in a table within the present Scheme. It is therefore proposed that the UNC is amended such that this table, with the revised values, is incorporated within the UNC and becomes part of the scheme as included within the UNC. To illustrate what is envisaged by the Proposal, an amended table is attached to this proposal as Appendix One.

2 User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

This proposal does not require User Pays arrangements as it does not amend the services of the Agent. The recovery mechanism used by Transporters for costs under this scheme are set out in the Transporter Licence.

EDF Energy agrees with the Proposer that this is not a User Pays Proposal. Through development of this Proposal it was clear that xoserve would not be required to undertake any additional validation to that which is currently required. Therefore there will be no additional costs and so this is not a User Pays Proposal. As recognised by the Proposal if there is an increase in claims under this scheme, then the cost of this will be recovered as a pass through item in Transportation charges.

b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

No User Pays charges applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

No User Pays charges applicable to Shippers.

d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

No charges applicable for inclusion in ACS.

3 Extent to which implementation of the proposed modification would better

facilitate the relevant objectives

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

British Gas considers that by removing the perverse incentives associated with theft detection, there will be a corresponding increase in the amount of theft detected. This will lead to a more efficient operation of the pipe-line system by preventing unsafe interference in the system that all theft represents.

In addition, by removing the current disincentives the Reasonable Endeavours Scheme represents, individual instances of theft will be detected sooner than if the disincentives not been removed. This earlier detection of theft will avoid the potentially greater damage to the network that long term theft risks, for example through explosions. This modification will therefore also improve the economic operation of the network.

Finally, theft is by its very nature inefficient and results in a lack of information flowing about where gas is being used. As this modification will increase the amount of theft detected, better information will be available and the margin of error will be reduced, increasing the efficient and economic operation of the pipeline system.

Standard Special Condition A11.1 (b): so far as is consistent with subparagraph (a), the coordinated, efficient and economic operation of

(i) the combined pipe-line system, and/ or

(ii) the pipe-line system of one or more other relevant gas transporters;

British Gas considers, as with its comments on standard special condition A11.1 (a) above, this modification will impact theft across all pipeline systems.

Standard Special Condition A11.1 (c): so far as is consistent with subparagraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;

British Gas considers that in the course of detecting theft, suppliers will often find instances where theft has occurred upstream of the Emergency Control Valve, and is therefore “in the course of conveyance”, as defined by paragraph 9(1), Schedule 2B of The Gas Act (1986). As this Proposal will increase the volume of theft detected, and considering Suppliers’ existing obligations to notify such theft to the Network Owner, it will also create a marginal increase in the volume of upstream theft detected by the networks, improving the efficiency with which they meet their obligations under Licence Condition 7.

Furthermore, the Transporter has an obligation under Licence Condition 5 to ensure that any amount of gas taken illegally after the Emergency Control Valve is removed from that Supplier’s charges, provided that Supplier has made reasonable endeavours to recover their costs. By increasing the incentive on Suppliers to submit Reasonable Endeavour claims following theft detection, it follows that Transporters will be able to more efficiently discharge their obligations under Licence Condition 5.

EDF Energy highlight that Standard Condition 7.6 requires the Transporters to operate a scheme as designated by the Authority to compensate Suppliers for the reasonable costs incurred in detecting and pursuing instances of gas illegally taken. Whilst EDF Energy recognises that the Gas Transporters are compliant with this Licence Condition they felt that implementation of this Proposal will facilitate this further by making the scheme more widely available. They also note that this would also appear to be aligned with the intent of the Licence Condition as it would appear odd to require the development and implementation of a scheme that is hard to locate.

Standard Special Condition A11.1 (d): so far as is consistent with subparagraphs (a) to (c) the securing of effective competition:

- (i) between relevant shippers;***
- (ii) between relevant suppliers; and/or***
- (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;***

By creating a robust incentive mechanism this Proposal would better facilitate condition A11.1(d) as it would provide a more accurate energy allocation between Shippers, thus promoting competition.

British Gas considers that Theft distorts the information Transporters receive on how much gas is used, how much gas is needed and where that gas is needed. Thus theft has implications on Transporters' ability to effectively plan for seasonal gas demand. By removing perverse incentives associated with theft detection, Transporters will gain a better understanding of where gas demand is, and how much it will be, thereby increasing the licensee's ability to plan for seasonal gas demand.

Standard Special Condition A11.1 (e): so far as is consistent with subparagraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (f): so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

Implementation would not be expected to better facilitate this relevant objective.

4 The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

5 The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) Implications for operation of the System:

No such implications identified.

b) Development and capital cost and operating cost implications:

The Proposal increases incentives for Shippers and it is likely more claims will be submitted with a subsequent increase in Transporter operating costs.

c) Extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

No cost recovery proposed.

d) Analysis of the consequences (if any) this proposal would have on price regulation:

No such implications identified.

6 The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

No such consequence is anticipated if Transporter licence conditions are changed to reflect the requirements of this proposal.

EDF Energy highlight that currently the Reasonable Endeavours Scheme is a requirement of Standard Condition 7 of the Gas Transporters Licence, and there are cross references within this Licence to the Scheme. There is therefore a risk if this Proposal is implemented without a corresponding change to Standard Condition 7. This could expose the Transporters to the risk of dual Governance. EDF Energy therefore believes that implementation of this Proposal is contingent on a corresponding change to Standard Condition 7; however they recognise that this is in the control of Ofgem.

7 The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users

No changes to systems would be required as a result of implementation of this Proposal.

8 The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Administrative and operational implications (including impact upon manual processes and procedures)

No such implications identified.

Development and capital cost and operating cost implications

No such costs have been identified.

Consequence for the level of contractual risk of Users

No such consequence is anticipated.

9 The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Consumers and Suppliers are likely to benefit from the correct apportionment of energy due to the increased number of investigations undertaken resulting in the reduction of theft.

10 Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

No such consequences.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

- Reduces disincentives on Users to investigate theft by increasing the level of compensation claimable.
- The level of compensation is more reflective to the cost of investigating theft.
- Provides transparency and a robust mechanism for the continued governance of the reasonable endeavours scheme.
- May help to improve the allocation of energy by market segment.
- May provide a disincentive to theft by increasing likelihood of detection and prosecution by Users.

Disadvantages

- May require additional administrative and operational resources to manage the increase in work load for Users and Transporters.
- Increases the existing compensation values and cost of operating the existing scheme.

12 Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

It was clarified at the UNC Panel Meeting on 15 October 2009 that Shippers would be at liberty to send any relevant confidential information to Ofgem, who might decide to publish the data in aggregate form.

Representations were received from the following parties:

| Organisation | Position |
|----------------------------|-------------------|
| British Gas | Supports |
| E.ON UK | Supports |
| EDF Energy | Supports |
| National Grid Distribution | Comments |
| RWE npower | Supports |
| Scotia Gas Networks | Not in Support |
| Wales & West Utilities | Qualified Support |

In summary of the 7 representations received, 4 were in support, 1 offered qualified support, 1 offered comments and 1 was not in support of the Proposal.

British Gas added that theft is dangerous to those who commit it, and those who live around them. By its very nature, bypassing or tampering with the gas installation and the inherent safety features poses a grave risk to those in the immediate vicinity, and any measure which reduces theft will therefore also improve customer safety.

In addition, costs which a Supplier reasonably incurs during the course of detecting theft of gas, but which cannot be recovered through the Reasonable Endeavours Scheme are currently passed through to customers in the form of higher charges. Thus the deficiencies within the current scheme directly impact the wider, law-abiding, population.

National Grid Distribution highlighted that existing payments made to Users under the Reasonable Endeavours Scheme (pursuant to standard condition 7(5) – 7(7) of the DN Licence) are classified as “Distribution Network allowed pass-through items” under Special Condition E3 of the DN Licence. In the event of implementation, such payments would be paid pursuant to the UNC, and these should also be classified as “Distribution Network allowed pass-through items”.

RWE Npower considers Theft of gas to be a serious issue, both from a health and safety and financial point of view, and it is important that energy Suppliers are able to recoup at least a reasonable proportion of the costs that they are likely to incur in recovering monies from those who misappropriate energy. It would also seem logical that an issue of this magnitude be incorporated within the governance of the UNC by means of a UNC Related Document.

Whilst SGN understands the intent of the Proposal, they have significant

concerns in relation to the GT licence. If the Proposal were to be implemented without corresponding consequential changes being made to the GT licence, the GTs would be exposed to obligations set out in the UNC together with those already set out in the GT licence in respect of the RES and the amounts to be paid to Shippers. Theoretically, the GTs could be exposed to “double recovery” of the relevant allowance by the Shipper/Supplier. Therefore, in the absence of appropriate licence amendments being made in parallel with this Proposal, they do not support its implementation.

The areas of the licence which SGN considers would specifically be impacted are:

- Paragraph 8 of Standard Licence Condition 7 – This is a requirement on a GT to set out in a document the actions a Supplier must take if they are to be able to claim certain costs from the GT in respect of the theft of gas. Without consequential changes to the GT licence being made and if the Proposal were to be implemented, then the GTs would be exposed to RES obligations set out in two places, one in the licence and one in the UNC. This is clearly inappropriate and unacceptable.
- Paragraph 5, 6 & 7 of Standard Licence Condition 7 – These paragraphs provide for payments to be made to shippers where the requirements of the RES have been met; and the determination of those values including those set out in a Scheme designated by Ofgem. If the Proposal were to be implemented without consequential changes being made to the GT licence the GTs would be under two obligations to make payments to Suppliers, one under the existing licence condition and one under the UNC. This is clearly inappropriate and unacceptable.
- Special Condition E3 - The GDNs' price control includes a pass-through term relating to the costs incurred by a supplier as set out in Standard Licence Condition 7. If the Proposal were to be implemented and relevant consequential licence changes not made to Standard Licence Condition 7 the GDNs would have no means of recovering the money paid to Suppliers under the proposed UNC arrangements. Again this would be unacceptable.

Wales & West Utilities also raise concerns about dual governance and highlight that the Reasonable Endeavours Document, as drafted, will remain an obligation under Standard Condition 7 of their licence. As a UNC Related Document, this becomes a joint document rather than Transporter specific. The modification process for the UNC Related Document is to be by way of a UNC Modification Proposal. These changes are not acceptable whilst the production of the Reasonable Endeavours Document remains an obligation under Standard Condition 7 of their licence as it places Transporters in an untenable position. To resolve this matter there would need to be further changes made to Transporter licence conditions.

13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

Implementation is not required to enable each Transporter to facilitate compliance with safety or other legislation.

14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

Implementation is not required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence.

15 Programme for works required as a consequence of implementing the Modification Proposal

Implementation of the Proposal will require coordination with changes proposed to the Transporter's licence.

16 Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

As the Proposal addresses a deficiency in present day arrangements it should be implemented as soon as possible, subject to the required changes to the Transporter's licence.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

18 Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

At the Modification Panel meeting held on 21 January 2010, of the 10 Voting Members present, capable of casting 10 votes, 5 votes were cast in favour of implementing this Modification Proposal. Therefore the Panel did not recommend implementation of this Proposal.

19 Transporter's Proposal

20 Text

Legal Text has been published along side this Modification Report.

For and on behalf of the Relevant Gas Transporters:

Tim Davis

Chief Executive, Joint Office of Gas Transporters

Appendix 1

Table 1

| | |
|---|--|
| (i) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 10(1) of Schedule 2B, including preparation of investigation report and notification to the police (actions 1 and 2 in RED) | Actual costs up to a maximum of £1000. |
| (ii) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 11(2) of Schedule 2B including preparation of investigation report and notification to the police (actions 1 and 2 in RED) | Actual costs up to a maximum of £1000. |
| (iii) In cases (i) and (ii) above the assessment and pursuit of charges for gas taken (actions 3, 4 and 5 in RED) | Actual costs up to a maximum of £1000. |
| (iv) Attendance at premises (including at primary or secondary sub-deduct premises) where a supply has been taken in such circumstances as are mentioned in Standard Condition 7(4)(c) of the licence including assessment and pursuit of charges and attempted identification of person taking supply (actions 2, 3, 4 and 5 in RED) | Actual costs up to a maximum of £1000. |
| (v) Meter exchange costs, including material, labour and sundry costs relating to new meter and its installation | Actual costs up to a maximum of £1000. |
| (vi) Forensic tests | Actual costs up to a maximum of £1000. |
| (vii) Court fees including issue of summons, service, judgement and execution fees | Actual costs. |

**The Company Secretary
Blackwater 2 Limited
1-3 Strand
London
WC2N 5EH**

**GAS TRANSPORTERS LICENCE
STANDARD CONDITION 7 (PROVISION OF INFORMATION RELATING TO GAS ILLEGALLY
TAKEN)**

**Designation issued by the Gas and Electricity Markets Authority pursuant to Standard Condition 7
(Provision of Information Relating to Gas Illegally Taken)**

WHEREAS:

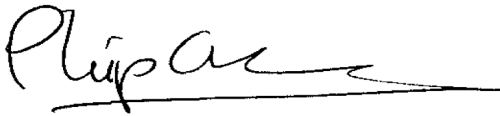
- (a). Blackwater 2 Limited ("the licensee"), a company registered in England and Wales with company number 5046791, is the holder of a gas transporters licence ("the licence") granted by the Gas and Electricity Markets Authority ("the Authority") under section 7 of the Gas Act 1986 ("the Act") on 5 November 2004 in respect of the Wales and West Distribution Network.
- (b). Pursuant to a direction issued today by the Authority (the "modification direction"), certain modifications to the licence were directed to take effect. Whilst Standard Condition 7 has not been modified, the designation of a scheme by the Authority under that condition has been reconsidered in the light of the matters referred to in this letter.
- (c). Pursuant to paragraph 6 of Standard Condition 7, in the situation described in paragraph 5 of that condition, the licensee is required to calculate an amount to contribute to the value of an allowance according to which the licensee must reduce the charges to be paid to it by a shipper in pursuance of the arrangements between them and to calculate the amount according to principles set out in a scheme designated by the Authority.
- (d). On 17 October 1997 the Director General of Gas Supply designated a scheme, the "Transco (Allowances for Gas Taken Illegally) Scheme 1997", ("the old designation"). The old designation was given in the context of Transco plc carrying out activities in relation to the NTS and eight Distribution Networks ("DNs") which, following various directions made by the Authority pursuant to its conditional decision to allow the licensee to sell four of its DN's, will not be the case under the licence going forward.
- (e). The old designation was made in respect of Transco's gas transporters licence treated as granted by the Gas and Electricity Markets Authority ("the Authority") under section 7 of the Gas Act 1986 ("the Act") which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry pursuant to paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 (the "original Transco licence") and covered the licence by virtue of a comfort letter issued to Transco the benefit of which lasted until today.
- (f). Pursuant to a further direction issued today (the "revocation direction") the Authority directed that certain consents, acceptances, directions, approvals, indications, agreements and other similar instruments issued by the Authority to Transco pursuant to the licence prior to the date of this letter be restated and limited to apply to the NTS only and certain others be granted in respect of the licence.

- (g). The old designation was identified in the revocation direction as one which should be granted to the licensee in respect of the licence.
- (h). Having carefully considered the terms of the revocation direction the Authority designates the scheme annexed to this letter in the terms and conditions set out in this to this letter:

NOW THE AUTHORITY HEREBY DESIGNATES A SCHEME AS FOLLOWS:-

1. Subject to paragraph 2 below and the revocation direction and in accordance with Standard Condition 7, the Authority hereby designates the scheme annexed hereto.
2. This designation shall take effect on and from the date specified below and shall continue until revoked, amended or replaced by the Authority following consultation with the licensee on giving six months prior written notice to the licensee or such other period as may be agreed in writing between the Authority and the licensee.

Dated the 1 May 2005



Philip Davies
Director - Markets

Duly authorised by the Authority

Scheme designated by the Gas and Electricity Markets Authority pursuant to Standard Condition 7 of the gas transporter licence granted to Blackwater 2 Limited under section 7 of the Gas Act 1986 (Provision of Information Relating to Gas Illegally Taken)

INTERPRETATION

1. In this scheme, unless the context otherwise requires —

“the licensee” means Blackwater 2 Limited;

“the Act” means the Gas Act 1986 (as amended);

“the licence” means the licence treated as granted under section 7 of the Act to the licensee on 5 November 2004 in respect of the Wales and West Distribution Network;

“primary sub-deduct premises” means premises to which gas is conveyed by the licensee before being conveyed to secondary sub-deduct premises;

“the reasonable endeavours document” (abbreviated in the table in paragraph 6 below to RED) means the document entitled Gas Illegally Taken – Reasonable Endeavours – Blackwater 2 Limited received by the Authority for consideration of approval on 21 April 2005;

“Schedule 2B” means Schedule 2B to the Act;

“secondary sub-deduct premises” means premises to which gas is conveyed in pursuance of an exemption from section 5(1)(a) of the Act granted under section 6A thereof, for supply by a gas supplier;

GAS TAKEN IN THE COURSE OF CONVEYANCE

2. Paragraph 3 below shall apply:

(i) where it appears that:

(a) sub-paragraph (1) of paragraph 9 of Schedule 2B may apply by reason that a person has, or may have, taken a supply of gas in the course of conveyance by the licensee; or

(b) sub-paragraph (2) of the said paragraph 9 may apply by reason that a person has, or may have, taken a supply of gas at any premises which has been conveyed thereto by the licensee, and

in either of the above cases, the licensee has investigated the matter and, subject to the outcome of that investigation, used reasonable endeavours to recover, in pursuance of the said sub-paragraphs (1) or (2), the value of the gas, being for this purpose the amount which, if the gas had been taken in such circumstances as are mentioned in paragraph 8(2) of Schedule 2B, could reasonably be expected to have been payable in respect of that gas under a contract deemed to have been made by virtue of that sub-paragraph; or

(ii) where it appears that:

(a) a person has, or may have, taken a supply of gas previously conveyed by the licensee to primary sub-deduct premises in circumstances where sub-paragraph (1) of paragraph 9 of Schedule 2B to the Act might have applied but for the fact that the gas was, at the time of such taking, in the course of being conveyed to secondary sub-deduct premises; or

- (b) a person has, or may have, taken a supply of gas previously conveyed by the licensee to primary sub-deduct premises in circumstances where sub-paragraph (2) of the said paragraph 9 might have applied but for the fact that the premises to which the gas had, at that time, been conveyed were secondary sub-deduct premises, and in either of the above cases, the licensee has investigated the matter and subject to the outcome of that investigation, used reasonable endeavours to recover the amount which, if the gas had been taken in such circumstances as are mentioned in paragraph 8(2) of Schedule 2B, could reasonably be expected to have been payable in respect of that gas under a contract deemed to have been made by virtue of that sub-paragraph.
3. Where this paragraph applies, Special Condition E4 of the licence, which limits or has the effect of limiting the charges made by the licensee in pursuance of transportation arrangements or the revenue derived therefrom, shall be modified;
- (i) by deducting from Transportation Revenue the costs incurred by the licensee
- (a) in carrying out investigations referred to in paragraph 2 above;
- (b) in the recovery or attempted recovery of the amount referred to in paragraph 2(i) or 2(ii) above; and
- (c) which are attributable to any gas being acquired, or not being disposed of, by the licensee by reason of the taking of gas in the circumstances set out in paragraph 2 above, and
- (ii) by adding to Transportation Revenue all of any of the amount recovered by the licensee referred to in paragraph 2(i) or 2(ii) above,
- so as to secure that, as nearly as may be and taking one year with another, the licensee suffers no financial detriment, and acquires no financial benefit, as a result of the taking of the gas and its compliance with paragraph 1 of Standard Condition 7.

OTHER TAKINGS OF GAS

The calculation of allowances to be granted by the licensee for the purposes of calculating charges to be paid to it by shippers

4. Where a shipper notifies the licensee that paragraph 5 of Standard Condition 7 applies and that sub-paragraphs (a) and (b) of that paragraph are met, that paragraph requires the licensee, for the purposes of calculating and claiming charges to be paid to it by the shipper in pursuance of arrangements between them ("the Charges"), to;
- (i) treat the amount of gas to which the supplier's charges (as defined in paragraph 5(a)(ii)) relate as not having been taken out of its pipe-line system by the shipper, and
- (ii) further reduce the Charges by an amount equal to that of an allowance in respect of:
- (aa) the reasonable cost to the supplier concerned of complying with a request or requirement by a shipper to investigate and use its reasonable endeavours to recover the charges to which it is entitled in the case of paragraphs 4 (a) to (c) of Standard Condition 7, and
- (bb) an amount calculated according to principles set out in a scheme designated by the Authority for the purposes of Standard Condition 7.
5. The scheme referred to in paragraph 4(ii)(bb) above is this scheme.
6. The principle referred to at paragraph 4(ii)(bb) above is that the allowance shall be such as to

ameliorate any disincentive on the part of suppliers to investigate and use reasonable endeavours to recover the charges to which they would be entitled as referred to in paragraph 5 of Standard Condition 7. This shall be the case where the allowance is equal to the fixed amounts for measures reasonably shown to have been taken by suppliers as set out in Table 1, provided always that:

- (i) in respect of a single case only one of the allowances set out in sections (i), (ii), and (iv) of the table may be claimed; and
- (ii) where, in respect of any matter investigated, the supplier recovers a proportion of such charges as are mentioned in paragraph 4(ii) of this scheme, the total of the allowances calculated in accordance with the table in respect of that matter shall be reduced by that proportion.

TABLE 1

| | |
|---|---|
| (i) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 10(1) of Schedule 2B, including preparation of investigation report and notification to the police (actions 1 and 2 in RED) | A fixed amount of £125 |
| (ii) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 11(2) of Schedule 2B including preparation of investigation report and notification to the police (actions 1 and 2 in RED) | A fixed amount of £125 |
| (iii) In cases (i) and (ii) above the assessment and pursuit of charges for gas taken (actions 3, 4 and 5 in RED) | A fixed amount of £125 |
| (iv) Attendance at premises (including at primary or secondary sub-deduct premises) where a supply has been taken in such circumstances as are mentioned in Standard Condition 7(4)(c) of the licence including assessment and pursuit of charges and attempted identification of person taking supply (actions 2, 3, 4 and 5 in RED) | A fixed amount of £125 |
| (v) Meter exchange costs, including material, labour and sundry costs relating to new meter and its installation | Actual costs for meter exchange up to U16 size with a limit of £250 |
| (vi) Forensic tests | Actual cost up to a maximum of £120 |
| (vii) Court fees including issue of summons, service, judgement and execution fees | Actual costs |

The Company Secretary
Blackwater 2 Limited
1-3 Strand
London
WC2N 5EH

**GAS TRANSPORTERS LICENCE
STANDARD CONDITION 7 (PROVISION OF INFORMATION RELATING TO GAS ILLEGALLY
TAKEN)**

**Approval issued by the Gas and Electricity Markets Authority pursuant to Standard Condition 7
(Provision of Information Relating to Gas Illegally Taken)**

WHEREAS:

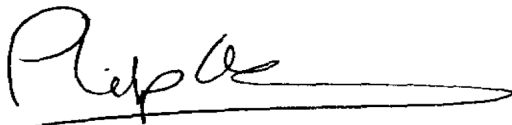
- (a). Blackwater 2 Limited ("the licensee"), a company registered in England and Wales with company number 5046791, is the holder of a gas transporters licence ("the licence") granted by the Gas and Electricity Markets Authority ("the Authority") under section 7 of the Gas Act 1986 ("the Act") on 5 November 2004 in respect of the Wales and West Distribution Network.
- (b). Pursuant to a direction issued today by the Authority (the "modification direction"), certain modifications to the licence were directed to take effect. Whilst Standard Condition 7 has not been modified, an approval given by the Authority under that condition has been reconsidered in the light of the matters referred to in this letter.
- (c). Pursuant to paragraph 8 of Standard Condition 7, the licensee is required, inter alia, to prepare a document laying down the manner in which a supplier should act to be presumed to have used its reasonable endeavours to recover the charges to which it is entitled, being "supplier's charges" as defined in paragraph 5, for the purposes of paragraphs 5 and 7 of that condition ("the reasonable endeavours document"). The reasonable endeavours document is subject to the approval of the Authority.
- (d). Prior to the date of this letter, an approval was given to Transco plc ("Transco") in the context of Transco carrying out activities in relation to the NTS and eight Distribution Networks ("DNs") which, following various directions made by the Authority pursuant to its conditional decision to allow the licensee to sell four of its DN's, will not be the case under the licence going forward ("the old approval").
- (e). The old approval was given in respect of Transco's gas transporters licence treated as granted by the Gas and Electricity Markets Authority ("the Authority") under section 7 of the Gas Act 1986 ("the Act") which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry pursuant to paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 (the "original Transco licence") and covered the licence by virtue of a comfort letter issued to Transco the benefit of which lasted until today.
- (f). Pursuant to a further direction issued today (the "revocation direction") the Authority directed that certain consents, acceptances, directions, approvals, indications, agreements and other similar instruments issued by the Authority to Transco pursuant to the licence prior to the date of this letter be revoked.
- (g). The old approval was established in the revocation direction as one which should be revoked.

- (h). The licensee has, under paragraph 8 of Standard Condition 7, prepared a document, the Gas Illegally Taken – Reasonable Endeavours – Blackwater 2 Limited document, after consultation with relevant shippers and relevant suppliers and on 21 April 2005 requested approval by the Authority.
- (i). Having carefully considered the licensee's application, the Authority is minded to grant its approval on the terms and conditions set out in this letter:

NOW THE AUTHORITY HEREBY APPROVES AS FOLLOWS:-

1. Subject to paragraph 2 below and the revocation direction and for the reasons stated in the revocation direction, the Authority in accordance with paragraph 8 of Standard Condition 7, hereby approves the document entitled Gas Illegally Taken – Reasonable Endeavours – Blackwater 2 Limited, received on 21 April 2005, which is annexed to this letter.
2. This approval shall take effect on and from the date specified below and shall continue until revoked, amended or replaced by the Authority following consultation with the licensee on giving six months prior written notice to the licensee or such other period as may be agreed in writing between the Authority and the licensee.

Dated the 1 May 2005



Philip Davies
Director - Markets

Duly authorised by the Authority

BLACKWATER 2 LIMITED

GAS ILLEGALLY TAKEN – REASONABLE ENDEAVOURS

1. Introduction

This document has been prepared by Blackwater 2 Limited as required under Condition 7 (Provision of Information Relating to Gas Illegally Taken) of the Standard Conditions of Blackwater 2 Limited Gas Transporters' Licence.

The document defines the circumstances in which a supplier shall be presumed for the purposes of Standard Conditions 7(5) and 7(7) to have used its reasonable endeavours to recover charges in cases of gas taken illegally.

If reasonable endeavours have been used, but the supplier has failed and cannot reasonably be expected to recover some or all of the supplier's charges, as referred to in Standard Condition 7(5)(a)(ii), to which it is entitled under a contract or deemed contract or otherwise, then the Blackwater 2 Limited will, in addition to treating the amount of gas to which the supplier's charges relate as not having been taken out of its pipeline system for the relevant shipper for the purposes of calculating and claiming charges to be paid to it by that shipper in pursuance of arrangements between them, reduce the shipper's charges by an amount equal to an allowance to the relevant shipper in respect of:

- i. the reasonable cost to the supplier concerned of complying with a request or requirement to investigate gas illegally taken and using its reasonable endeavours to recover its charges; and
- ii. an amount calculated in accordance with principles set out in a scheme designated by the Authority for the purposes of standard licence condition 7.

2. Reasonable Endeavours Description

Without prejudice to Standard Condition 7(10), the supplier concerned shall be presumed to have used its reasonable endeavours if, following an investigation into a situation of gas taken illegally:

- (i) in the case of a Gas Act offence, action (1) listed in paragraph 3 has been completed,
- (ii) in all cases, action (2) listed in paragraph 3 has been completed and,
- (iii) where the whereabouts of the gas user are known, actions (3) - (7) listed in paragraph 3, (so far as applicable), have been completed.

3. Reasonable Endeavours Actions

- (1) *In the case of an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Gas Act 1986 (as amended), a report of the investigation, including an estimate of the amount of gas taken illegally and supported by any appropriate evidence and statements from witnesses, has been presented to the police and a crime number requested.*
- (2) *In all cases, efforts have been made to determine the identity and whereabouts of the person, or a representative in the case of an organisation, with whom the supplier has a contract or deemed contract.*

These efforts are to use where relevant, and not to the exclusion of any other source which the supplier might consider appropriate, information which the supplier has established:

- (i) from any contract in its possession, and / or
- (ii) following enquiries which should be made by the supplier to such local authorities, landlords or owners/occupiers of any neighbouring properties as may reasonably be able to assist.

Additional actions to be taken when the whereabouts of the person with whom the supplier has a contract or deemed contract is known:

(3) The person with whom the supplier has a contract or deemed contract has been furnished with a demand for payment for the supplier's charges (that is the charges to which it is entitled, in respect of the supply of gas taken as mentioned in Standard Condition 7(4), including any sum to which it is entitled in connection with the taking of the gas or by way of costs incurred in investigating or pursuing the matter). This requirement is irrespective of any action which the supplier might have taken either at the time of discovery of the illegal taking, or subsequently, to cut off the supply or to disconnect the premises of the person offending with whom the supplier has a contract or deemed contract.

(4) Arrangements have been made available to the person identified in action (3) above to make payment to the supplier in accordance with one or more of the methods identified in Conditions 43, 35(2)(b), 35(2)(d), 35(2)(e) and 35(2)(f) of the Standard Conditions of Gas Suppliers' Licences. Such arrangements shall be designed so that the agreed sum will be recovered within a maximum period of 24 months from agreement of the arrangements. A sum less than the whole of the supplier's charges may be agreed where, having due regard to the means available to the person (and the importance of securing that the supplier's charges are paid), this would not provide an opportunity for the person to avoid any part of the payment which could reasonably be made.

Where appropriate, a prepayment meter should be installed to assist recovery of the charges.

(5) If no arrangements can be agreed under action (4) above or if such arrangements, having been agreed, have failed to result in completion of the agreed payments to the supplier, the supply to the person identified in action (3) above has been cut off, or the premises of the person have been disconnected, and so remain for a period of not less than 28 days, in either case in so far as the supplier has the power to do so and may do so without causing it to be in breach of its licence or statutory obligations.

(6) Where an individual has become bankrupt or has had an interim order made in respect of his affairs or the company has gone into liquidation, administrative receivership or entered into a voluntary agreement, a claim has been filed with the official receiver, interim receiver, liquidator, administrative receiver as appropriate or, in the case of voluntary arrangements, with the nominee.

Additional actions to be taken in certain other cases of gas illegally taken:

(7) In cases where the person in 3 above, taking into account any gas taken illegally, is not a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence, civil proceedings have been issued and served to secure payment for any amount due unless it can be demonstrated that there is good reason for not doing so.

BLACKWATER 2 LIMITED

GAS ILLEGALLY TAKEN – ACTION LIST TO ACCOMPANY REASONABLE ENDEAVOURS

**These Notes are for guidance only and do not form part of
Reasonable Endeavours**

The following refer to the relevant actions set out in paragraph 3 of the “Blackwater 2 Limited - Gas Taken Illegally - Reasonable Endeavours” document.

Action (1)

In the case of an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Gas Act 1986 as amended by the Gas Act 1995 and incorporating stand-alone provisions of the Utilities Act 2000 (“the Act”), it is necessary to provide a report to the police and this must give full details of all the statutory offences (with reference to the Act, Theft Act and any other appropriate Act) which are believed to have taken place. A crime number should be obtained.

In cases where the police have refused to provide a crime number, evidence should be provided to Blackwater 2 Limited to support this.

Action (2)

This is especially relevant in situations of gas taken illegally where the person with whom the supplier has a contract or deemed contract has gone away and not left a forwarding address. An attempt to locate the relevant person must be made from information which the supplier has or which is reasonably available to them.

It should be noted that where a person has gone away without paying outstanding charges, but a contract other than a deemed contract exists and no offence under paragraph 10(1) or 11(1) of Schedule 2B to the Act has taken place, this does not constitute gas taken illegally as defined in Standard Condition 7 of Blackwater 2 Limited Gas Transporters’ Licence.

Action (3)

‘Costs incurred’ includes those associated with the replacement of damaged meters and gas fittings, isolation and restoration of the supply, investigation and debt recovery insofar as the supplier is entitled (whether by contract, deemed contract or otherwise) to recover the amounts.

The demand should clearly show how the charges have been calculated.

Action (4)

Terms of payment should take into account the person's ability to pay and must not provide an opportunity for the person to avoid any part of the payment which could reasonably be made.

Action (5)

When an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Act has been committed, the supply can be discontinued or isolated in accordance with paragraph 10(2) or 11(2) of the Schedule respectively.

Action (6)

A claim for refund of charges and payment of the allowance cannot be made until the supplier has a reasonable expectation of the amount of the distribution that is to be made.

Action (7)

Civil action is required in those cases where the person in 3(3) of the Reasonable Endeavours Document (RED), taking into account any gas taken illegally, is not a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence, unless it can be demonstrated that there are good reasons not to do so. Such reason would include situations where the cost of the action is likely to outweigh considerably any amount recovered. If a civil action is not taken, then the information used to arrive at this decision must be retained and produced on request.

On the same basis, civil action may also be taken in cases against a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence where this is thought appropriate.

Claim for Refund of Charges and Payment of the Allowance

To qualify for a refund of charges and payment of the allowance, a shipper must confirm to Blackwater 2 Limited that the supplier has completed all the appropriate actions of Reasonable Endeavours and has failed and cannot reasonably be expected to recover some or all of the charges to which it is entitled under a contract or deemed contract or otherwise.

Contractual records of end-customers and records of all actions taken to investigate illegal takings of gas and the pursuit of charges, including copies of reports presented to the police, must be kept by the supplier for a period of 3 years from the date of the claim having been made to Blackwater 2 Limited for the purposes of any audit which Ofgem and / or Blackwater 2 Limited may at their discretion wish to make.

Joint Office of Gas Transporters
0231V: Changes to the Reasonable Endeavours Scheme
to better incentivise the detection of Theft