

MODIFICATION PROPOSAL 346 - AN ALTERNATIVE TO THE SUPPLIER
ENERGY THEFT SCHEME BASED ON THROUGHPUT
DRAFT LEGAL TEXT – v.0.2 (16 DECEMBER 2010)
(prepared by Wales and West Utilities Limited)

Proposed Amendments to the Uniform Network Code
Transportation Principal Document
Sections B, S, [AA -TBC] and V

UNC Transportation Principal Document – Section B

Delete paragraph 1.7.8 and replace it with the following new paragraph 1.7.8:

- 1.7.8 The further provisions of the Code set out the basis on which Transportation Charges and Metering Charges are payable by Users; provided that (subject to paragraph 1.8.2) where:
- (a) the prevailing Transportation Statement, Metering Charges Statement or Agency Charging Statement provides for any charge which is not provided for in the Code; and
 - (b) the amount payable by way of such charge in any case is capable of being determined by reference to the provisions of the Code prevailing at the time

such charge shall be a Transportation Charge or Metering Charge and shall be payable by Users or Users of such class in accordance with the relevant provisions of the Transportation Statement (or Agency Charging Statement as the case may be) or the Metering Charges Statement respectively.

UNC Transportation Principal Document – Section S

Delete paragraph 1.1.4 and replace it with the following new paragraph 1.1.4:

- 1.1.4 An Invoice Document may show as an Invoice Amount an amount (a "self-bill amount") payable by the Transporter to a User including any amount in respect of which Regulation 13(3) of the Value Added Tax Regulations 1995 is to apply.

Delete paragraph 2.4.5 and replace it with the following new paragraph 2.4.5:

2.4.5 The liability of the Transporter pursuant to any provision referred to in paragraph 2.4.4 or Section AA4.3, I3.7 or J3.5 to make any payment to a User is without prejudice to the User's liability for any charge payable to the Transporter, and the Transporter shall not be entitled to discharge its liability by releasing the User from any such liability of the User; and the Transporter shall secure that (where relevant) the Invoice Amounts in relevant Ad-hoc Invoices are stated accordingly.

Insert the following new paragraphs 2.4.8 and 2.4.9:

2.4.8 The Transporters will submit (as an Ad-hoc Invoice) an Invoice Document in respect of amounts becoming payable by the User to the Transporters pursuant to Section AA 4.3.1 as soon as reasonably practicable after the month in which the User's liability to pay such amounts is determined pursuant to section 4.2.2.

2.4.9 Within a reasonable period of time after receipt of a SETS Payment the Transporters will submit (as an Ad-hoc Invoice) Invoice Documents in respect of corresponding amounts becoming payable by the Transporters to Users pursuant to Section AA 4.3.2.

UNC Transportation Principal Document – Section B

Delete paragraph 4.1.2 and replace it with the following new paragraph 4.1.2:

4.1.2 Subject to Section AA [5.2], paragraphs 3.2, 3.5 and 5 (excluding paragraphs 5.1 and 5.2) of the Modification Rules shall apply, *mutatis mutandis*, and disregarding references therein to other provisions of the Modification Rules, in respect of the Uniform Network Code Committee; provided a member of the Uniform Network Code Committee who is a Consumers' Representatives shall not be entitled to vote for the purposes of determining any decision of the Uniform Network Code Committee.

Delete paragraph 4.2.2 and replace it with the following new paragraph 4.2.2:

4.2.2 Subject to Section AA [5.2], to the extent that any procedure of the Uniform Network Code Committee is not provided for under this paragraph 4 or pursuant to paragraph 4.1.2, the Uniform Network Code Committee may by panel majority decide upon the procedures to be adopted by it.

At the end of paragraph 6.5.2(a) insert a new paragraph 6.5.2(a)(xi) as follows:

(xi) performance of the Transporters' obligations under Section AA;

UNC Transportation Principal Document – Section AA

At the end of Transportation Principal Document Section Z insert a new section AA as follows:

UNIFORM NETWORK CODE – TRANSPORTATION PRINCIPAL DOCUMENT SECTION AA - SUPPLIER ENERGY THEFT SCHEME

1. GENERAL

1.1 Introduction

1.1.1 The purpose of this Section AA is to reduce the overall cost of unaccounted for gas through the introduction and operation of a self-funding incentive scheme which will, directly or indirectly, encourage suppliers to invest in measures to detect instances of gas theft.

1.2 Definitions

1.2.1 For the purposes of this Section AA:

- (a) a **SETS Supply Meter Point** is a Supply Meter Point which (pursuant to Section G1.5.2) is not subject to the Daily Meter Read Requirement;
- (b) a **SETS Year** is a period of one year beginning at 00.00 hours on 1st [*insert calendar month immediately following month of Modification Proposal approval*] 2011 or on any anniversary thereof;
- (c) in relation to any SETS Year a **SETS User** is a person who is a User for the whole of that SETS Year;
- (d) **Gas Theft** means, in relation to the relevant premises, the taking of gas by the owner or occupier of such premises where:
 - (i) where an offence under paragraph 10(1) or 11(2) of Schedule 2B has been committed and a supply of gas has been taken by the owner or occupier of premises in the circumstances specified in paragraph 10(1) or 11(2) of Schedule 2B, as the case may be; or

- (ii) a supply of gas has been taken by the owner or occupier of the premises in the circumstances specified in paragraph 8(2) of Schedule 2B.
- (e) a **Theft Report** means a report made pursuant to paragraph 2.1.1;
- (f) **Reporting User** means, in relation to a Theft Report, the User which made that Theft Report;
- (g) **Schedule 2B** means Schedule 2B of the Act;
- (h) in respect of any SETS Year:
 - (i) a User's **SETS Market Share** is:

(T/S)

Where:

T is the aggregate of the Annual Quantities in respect of each SETS Supply Meter Point in relation to which the User is the Registered User on the final day of such SETS Year; and

S is the aggregate of the Annual Quantities in respect of all SETS Supply Meter Points on such day

- (ii) the **SETS Value** is the sum determined as such in respect of such SETS Year in accordance with paragraph 4.1.1;
- (i) **SETS Audit** means an audit conducted by the Transporters pursuant to paragraph 3.1.1.

1.2.2 References in this Section AA to Users do not include references to DNO Users.

1.2.3 References in this Section AA to Transporters are references to the Transporters with the exception of National Grid NTS and references to the Transporters in Sections S2.4.8 and S2.4.9 and, for the purposes of this Section AA, in GT Section 2.1.2 shall be construed accordingly.

2 REPORTING GAS THEFTS

2.1 Theft Reports

2.1.1 The Registered User of a SETS Supply Meter Point may report to the Transporters Gas Theft which has occurred or may have occurred in the vicinity of that SETS Supply Meter Point.

- 2.1.2 Any Theft Report shall include such particulars as are required for such purposes by the Guidelines (as defined for the purposes of Section S).
- 2.1.3 In making a Theft Report the Reporting User warrants that:
- (a) the information contained in such Theft Report is true to the best of its knowledge and belief; and
 - (b) it has evidence to demonstrate on a balance of probabilities that, a Gas Theft has occurred (to which such Theft Report relates).
- 2.1.4 In making a Theft Report the Reporting User shall comply with any code of practice from time to time adopted for the purposes of this Section AA by the UNC Committee, including with respect to the calculation of quantities of stolen gas.
- 2.1.5 Where no code of practice has been adopted by the UNC Committee for the purposes of this Section AA, or such code of practice does not specify the method(s) by which quantities of stolen gas should be determined, the provisions of paragraph 2.1.6 shall apply (but not otherwise).
- 2.1.6 Where this paragraph 2.1.6 applies, the quantity of stolen gas to be reported in any Theft Report shall be calculated by the Reporting User acting as a Reasonable and Prudent Operator so as to be insofar as practicable fair and accurate having regard to the relevant circumstances and for such purposes:
- (a) where there has been a significant decrease in the offtake of gas from the relevant SETS Supply Meter Point from a previously established pattern of offtake for which there is no plausible explanation other than theft, the quantity of stolen gas shall be determined by reference to the difference between the patterns of offtake before and after the decrease;
 - (b) where an established pattern of offtake or a change to such pattern cannot be ascertained, the quantity of stolen gas shall be determined by reference to the difference between the metered offtake from the relevant SETS Supply Meter Point, if any, for the relevant period (or if none zero) and the:
 - (i) estimated of consumption of gas over such period by major gas-consuming appliances on the premises which the occupier admits to having used or for which there is clear evidence of use, where the occupier of the relevant premises permits a survey and audit of gas-consuming appliances on the premises; or
 - (ii) the estimated consumption of gas at the relevant premises for such period determined by reference to standard load profiles with typical consumption levels, taking into account, where available, the type of premises, their geographic location, the number of

occupants and occupancy patterns, the tariff payable to the Supplier, evidence of use of other fuels at the premises, and any other relevant factors, where the occupier does not permit such a survey and audit.

2.1.7 A Reporting User shall (save where such Theft Report has been withdrawn) retain all evidence in its possession relating to the Gas Theft (or possible Gas Theft) concerned for a period of no less than one year and shall promptly provide such evidence to the Transporters following a request to do so.

2.1.8 The Reporting User may withdraw a Theft Report by giving notice to the Transporters of such withdrawal within 80 days of notification of such Theft Report to the Transporters.

2.2 Validation of Theft Reports

2.2.1 A Theft Report shall have been **Validated** where the Reporting User, within 80 days of submitting the Theft Report, notifies the Transporters that the Theft Report has correctly identified that a Gas Theft has occurred (to which such Theft Report relates).

2.2.2 In the event that the Reporting User of a Theft Report does not within 80 days of its submission serve a notice in relation to such Theft Report pursuant to paragraph 2.2.1, such Theft Report shall be deemed to have been withdrawn.

2.2.3 Each month the Transporters will issue to each User a report specifying in respect of the SETS Year within which the immediately preceding month falls:

- (a) the number of Theft Reports Validated in such SETS Year in respect of which the User was the Reporting User; and
- (b) the total quantity of stolen gas reported in such Validated Theft Reports in respect of which the User was the Reporting User;
- (c) the total number of Theft Reports Validated in such SETS Year;
- (d) the total quantity of stolen gas reported in all Theft Reports Validated by all Users (other than Users which are known at the time not be SETS Users with respect to the relevant SETS Year) in such SETS Year,

in each case by the end of such preceding month.

2.2.4 Save in so far as the conduct of audits pursuant to paragraph 3 requires validation of sampled Theft Reports, nothing in the Code shall require the Transporters to validate any Theft Report.

3 SETS AUDIT

3.1 Audit Process

- 3.1.1 The Transporters will throughout each SETS Year and in the month immediately following the end of the SETS Year conduct an ongoing audit of the Theft Reports Validated in the course of such SETS Year.
- 3.1.2 In conducting the SETS Audit, the Transporters shall select a sample of Validated Theft Reports which is, in so far as reasonably practicable, representative of the totality of Theft Reports Validated in the relevant SETS Year, and which does not unduly discriminate against any individual User, and, to that end, the number of Validated Theft Reports sampled in the course of a SETS Audit in relation to any single User shall be no less than [10] or, if fewer, each and every Theft Report Validated in the course of the relevant SETS year in relation to which such User was the Reporting User.
- 3.1.3 The Transporters shall, acting reasonably, determine the nature and extent of the SETS Audit in relation to any SETS Year having regard to the SETS Value for that SETS Year and the cost to Users of conducting such SETS Audit.
- 3.1.4 Subject to paragraph 3.1.3, a SETS Audit shall be conducted so as to determine whether, in relation to each sampled Validated Theft Report, the Reporting User met the following criteria:
- (a) it was materially compliant with the requirements of paragraph 2.1;
 - (b) it has evidence to demonstrate on a balance of probabilities that a Gas Theft occurred (to which such Theft Report relates).
- 3.1.5 A Validated Theft Report shall be **Non-compliant**, where in the course of a SETS Audit the Transporters determine that the Reporting User failed to meet the criteria specified at paragraph 3.1.4 in relation to such Validated Theft Report, but disregarding compliance with any applicable code of practice or, where applicable, the provisions of paragraph 2.1.6, in relation to the determination of the quantity of stolen gas.
- 3.1.6 The Transporters' determinations as to whether or not Validated Theft Reports are Non-compliant and as to the choice of Validated Theft Reports to be sampled, the nature and extent of the SETS Audit, and, in the course of such audit, the amount of gas stolen in connection with any Validated Theft Report shall be final and binding.
- 3.1.7 Subject to paragraph 3.1.8, in relation to a SETS Year:
- (a) a User's **SETS Error Rate** is:

N/T

(b) a User's **SETS Accuracy Rate** is:

$$1 - E$$

(c) the **Overall Accuracy Rate** is:

$$1 - (A/S)$$

Where:

T is the total quantity of stolen gas reported in Validated Theft Reports sampled in the course of the relevant SETS Audit in respect of which such User was the Reporting User

N is the total quantity of gas determined in the course of the SETS Audit as having been stolen in connection with offences to which Validated Theft Reports (but excluding Non-Compliant Theft Reports) in respect of which such User was the Reporting User relate.

E is the SETS Error Rate in relation to such SETS Year for such User

A is the total quantity of stolen gas determined in the course of the SETS Audit as having been stolen in connection with offences to which Validated Theft Reports (but excluding Non-Compliant Theft Reports) made by all SETS Users relate

S is the total quantity of stolen gas reported in Theft Reports Validated by all SETS Users in such SETS Year.

3.1.8 Where in the course of a SETS Audit no Validated Theft Reports were sampled in respect of which a User was the Reporting User the SETS Error Rate in relation to such User and the relevant SETS Year shall be 0 (zero).

3.2 SETS Audit Reports

3.2.1 As soon as reasonably practicable after the completion of a SETS Audit, the Transporters shall provide a report on the completed SETS Audit to each SETS User, specifying in relation to each Validated Theft Report sampled in the course of the SETS Audit in respect of which such User was the Reporting User the Transporters' determination as to whether or not such Validated Theft Report was Non-compliant.

3.2.2 The Transporters shall as soon as reasonably practicable after the end of a SETS Year publish a report summarising the findings of the SETS audit but excluding information in relation to any User or any other party which, in the opinion of the Transporters, acting reasonably, is confidential or commercially sensitive.

3.2.3 Nothing in this paragraph 3.2 shall require the Transporters to disclose information in breach of any Legal Requirement.

4 SETS PAYMENTS

4.1 SETS Value

4.1.1 For the purposes of determining the SETS Value in relation to any SETS Year, the base value of £12.062 million is expressed at the value as at the beginning of the first SETS Year. The SETS Value for any SETS Year shall be such base value adjusted annually to take account of general price inflation. The index used will be the Retail Prices Index (RPI) with 1987 = 100 base. The source of the RPI index is to be the monthly Office for National Statistics “Focus on Consumer Price Indices”.

The SETS Value for any SETS Year will therefore be:

$$\frac{\textit{£12.062 million} * RPI_S}{RPI_B}$$

Where:

RPI_S is the arithmetic monthly average of RPI for such SETS year;

RPI_B is the arithmetic monthly average of RPI for the year ending on the day immediately preceding the first SETS Year.

4.2 Assessment of SETS Payments

4.2.1 As soon as reasonably practicable after providing the final monthly reports in relation to a SETS Year to SETS Users pursuant to paragraph 2.2.3, the Transporters shall notify each SETS User of the provisional assessment of the payment due to or from such User pursuant to paragraph 4.2.2 (subject to the provisions paragraph 4.3 and excluding any adjustment as a consequence of the SETS Audit) in respect of such SETS Year. Such provisional assessment shall be determined as follows:

$$P = (X*(SVD / TVD)) - (X*SMS)$$

Where:

P is the provisional assessment of the payment due to or from the SETS User, being a payment due to the User where positive and a payment due from the User where negative, save where the User’s SETS Market Share in respect of the relevant SETS Year expressed to four decimal places is zero, in which case such payment shall be zero

X is the SETS Value for the relevant SETS Year

STD is the total quantity of stolen gas reported in Theft Reports Validated in such SETS Year in respect of which the User was the Reporting User

TTD is the total quantity of stolen gas reported in Theft Reports Validated in such SETS Year by all SETS Users

SMS is the User's SETS Market Share in respect of that SETS Year expressed to four decimal places.

- 4.2.2 As soon as reasonably practicable after completion of the SETS Audit in relation to a SETS Year the Transporters shall calculate the payment due from or (subject to the provisions of paragraph 4.3) to such User (taking into account adjustments as a consequence of the SETS Audit) in respect of such SETS Year. Such payments shall be determined as follows:

$$P = (X*(SVD*SAR) / ((TVD*OAR) - (X*SMS)))$$

Where:

P is the payment due to or from the SETS User, being a payment due to the User where positive and a payment due from the User where negative, save where the User's SETS Market Share in respect of the relevant SETS Year expressed to four decimal places is zero, in which case such payment shall be zero

X is the SETS Value for the relevant SETS Year

SVD is the total quantity of stolen gas reported in Theft Reports Validated in such SETS Year in respect of which the User was the Reporting User

SAR is the User's Accuracy Rate in relation to the relevant SETS Year

TVD is the total quantity of stolen gas reported in Theft Reports Validated in such SETS Year in respect of which a SETS User was the Reporting User

OAR is the Overall Accuracy Rate in respect of such SETS Year

SMS is the User's SETS Market Share in respect of that SETS Year expressed to four decimal places.

- 4.2.3 Such notification shall be accompanied by a schedule setting out, in relation to the relevant SETS Year, the payments due from or (subject to the provisions of paragraph 4.3) to each SETS User as determined pursuant to paragraph 4.2.2, but without specifying the names of the Users to or from which such payments are due.

4.3 SETS Payments

- 4.3.1 Where a payment is determined pursuant to paragraph 4.2.2 as being due from a User in relation to a SETS Year, such payment (a “**SETS Charge**”) shall be invoiced by the Transporters and shall be payable by the User, in accordance with section S.
- 4.3.2 Where in relation to a SETS Year a payment is determined pursuant to paragraph 4.2.2 as being due (subject to this paragraph 4.3) to a User in relation to a SETS Year, the Transporters shall make a payment or payments (a “**SETS Credit**”) to such User as follows:

$$P = (R/D) * (I - A)$$

Where:

P is the payment to be made by the Transporters to the User

R is the aggregate of payments received by the Transporters from all Users in respect of SETS Charges (excluding VAT thereon, if any) in relation to the relevant SETS Year by the end of the month prior to the month in which payment P is to be made

D is the aggregate of SETS Charges payable by all Users in relation to the relevant SETS Year

I is the amount of the payment determined pursuant to paragraph 4.2.2 as being due (subject to this paragraph 4.3) to such User in relation to the relevant SETS Year

A is the amount (if any) of SETS Credits (excluding VAT thereon, if any) previously paid to such User in relation to the relevant SETS Year.

- 4.3.3 SETS Charges and SETS Credits shall be invoiced and payable in accordance with Section S.

5 SETS SUSPENSION

5.1 Suspension Applications

- 5.1.1 Where a SETS User believes that circumstances have arisen which renders the operation of this Section AA demonstrably inequitable, for example due to the such User having become, in the final months of a SETS Year, a Last Resort User (as defined in Section G2.1.7) in respect of a substantial number of SETS Supply Meter Points, such User may apply to the Transporters for suspension of the provisions of section 4.2 and 4.3 in relation to that SETS Year. Any such application (a “**Suspension Application**”) shall be made no later than two months after the end of the relevant SETS Year.

5.1.2 Where a Transporter receives a Suspension Application pursuant to paragraph 5.1.1, it shall refer the application to the Uniform Network Code Committee for determination.

5.1.3 Where the Uniform Network Code Committee receives a Suspension Application for determination it may decide to suspend the application of paragraphs 4.2 and 4.3 in relation to the relevant SETS Year on the grounds that the operation of those provisions would be demonstrably inequitable to one or more SETS Users, provided that:

- (a) such decision is made before the Transporters have notified SETS Users of the payments due to and from SETS Users pursuant to paragraph 4.2.2
- (b) all members of the Uniform Network Code Committee voting on the Suspension Application vote in favour of such suspension.

5.2 **Implementation of SETS Suspensions**

5.2.1 Where, in accordance with paragraph 5.2.1, the Uniform Network Code Committee has decided to suspend the application of paragraphs 4.2 and 4.3 in relation to a SETS Year, such paragraphs shall not apply in relation to, and no payments shall be due to or from SETS Users in respect of, such SETS Year pursuant thereto.

$$\frac{\pounds 12.062 \text{ million} * RPI_S * (1 - E)}{RPI_B}$$

Proposed Amendments to the Uniform Network Code Transition Document
Part IIC

Insert new paragraph 1.10 as follows:

1.10 TPD Section AA: Supplier Energy Theft Scheme

1.10.1 For the purposes of TPD AA Sections 3.1.3 and 4, the base value of £12.062 million for the SETS Value for the first two SETS Year is expressed at the value as at the beginning of the first SETS Year adjusted annually to take account of general price inflation and to take into account the Excluded SETS Shipper's share of SETS Supply Meter Points on the first day of the relevant SETS Year as determined in accordance with paragraph 1.10.3. The index used will be the Retail Prices Index (RPI) with 1987 = 100 base. The source of the RPI index is to be the monthly Office for National Statistics "Focus on Consumer Price Indices".

The SETS Value for the first two SETS Years will therefore be:

Where:

RPI_S is the arithmetic monthly average of RPI for such SETS year;

RPI_B is the arithmetic monthly average of RPI for the year ending on the day immediately preceding the first SETS Year

E is the Excluded SETS Shipper's share of SETS Supply Meter Points on the first day of the relevant SETS Year as determined in accordance with paragraph 1.10.3

1.10.2 For the purposes of paragraph 1.10.1 the Excluded SETS User's share of SETS Supply Meter Points in relation to the first two SETS Years shall be:

$$(E/S)$$

Where:

E is the number of SETS Supply Meter Points in relation to which the Excluded SETS User is the Registered User on the first day of the relevant SETS Year; and

S is the total number of all SETS Supply Meter Points on such day

1.10.3 For the purposes of TPD AA Section 4.2, in respect of the first two SETS Years:

- (a) a User which has made more than 50% of the reports of Gas Thefts which are determined as being valid by the Transporter Agency in the 12 months preceding the first SETS Year (the “**Excluded SETS User**”) shall be deemed not to be a SETS User; and
- (b) a User’s **SETS Market Share** is:

$$(T/S)$$

Where:

T is the number of SETS Supply Meter Points in relation to which the User is the Registered User on the final day of such SETS Year; and

S is the total number of all SETS Supply Meter Points on such day excluding SETS Supply meter Points in relation to which the Excluded SETS User is the Registered User on such day;

- (c) the **Overall Accuracy Rate** shall be:

$$1 - (A/S)$$

Where:

A is the total number of Validated Theft Reports (excluding Theft Reports in relation to which the Excluded SETS User was the Reporting User) determined in the course of the SETS Audit in relation to the relevant SETS Year as being Non-compliant

S is the total number of Theft Reports (excluding Theft Reports in relation to which the Excluded SETS User was the Reporting User) Validated in the relevant SETS Year.