

## **UNC425: Re-Establishment of Supply Meter Points – Shipperless Sites**

### **Ofgem Initial Drafting Comments on the Business Rules and Legal Text contained in the Final Modification Report dated 16 April 2013 and amended Legal Text provided on 10 July 2013**

#### **High Level Comments**

1. The Business Rules and Legal Text should be reviewed in order to ensure consistency with each other in particular re: the process to be applied and the persons referred to;
2. Consistency and precision of terms and phrases should be ensured throughout i.e. care should be taken to ensure that (a) the same terms and phrases are used where the same concept is referred to and vice versa; (b) distinct terms and phrases are used to describe distinct concepts; and (c) precise wording is used in order to remove ambiguity as to what is intended.

Without prejudice to the generality of the above, we set out below some specific comments.

<b>Legal Text</b>		
	<b>Paragraph</b>	<b>Comment</b>
<b>1.</b>	3.7.8	We note that this refers to circumstances where gas is or was being offtaken “during such period” without defining the period referred to.  Query, is this intended to be the same period referred to in the equivalent provision at existing TPDG provision 3.7.4 (dealing with circumstances where the same meter is identified) i.e. “the period from the date of Isolation to the date of Re-establishment”.
<b>2.</b>	3.7.8(b), 3.7.10(a), 3.7.10(b), 3.7.13(a), 3.7.14 (a)(i), 3.7.14, 3.7.16(b), 3.7.17	We note that liability of the Registered User for all charges associated with the Supply Meter Point is specified as being:  “from the date of Isolation or such later date as the User may demonstrate to the Transporter’s reasonable satisfaction that the Supply Meter was fitted”  Cf: the wording at 3.7.10(a), 3.7.9(ii) 3.7.10(b), 3.7.13(a) and 3.7.14 (a)(i) 3.7.14, 3.7.17 and 3.7.16 and BRs 15, 17 and 36.

	BR 14, 15, 17, 19, 36	<p>(a) Are the following discrepancies intentional, and if so for what reason:</p> <ul style="list-style-type: none"> <li>(i) The distinction between reference to the date of Isolation and date of Effective Supply Point Withdrawal e.g. does this reflect that 3.7.8 refers to isolation only incidents and 3.7.9 et seq. to Effective Supply Point Withdrawal, in which case should 3.7.10(a) refer to effective Supply Point Withdrawal. Note also the distinction between the date for liability for the charges at 3.7.10(a) and (b) and new 3.7.9(ii) which refers to obligations being applied as if the Effective Supply Point Withdrawal never became effective;</li> <li>(ii) The distinction between the meter fixed date being as notified to the Transporter or as demonstrated to the Transporter's reasonable satisfaction, and if so what is the justification for this distinction?</li> </ul> <p>(b) The wording in 3.7.8 (b) does not provide a method for determining how to chose which of the two apply i.e. it leaves open the possibility that if the Shipper does demonstrate the meter fix date to the Transporter's reasonable satisfaction, liability could still be from the date of Isolation cf. 3.7.10, 3.7.13(a) and 3.7.14(a)(i) which specified it will be the "later of" the two circumstances.</p>
3.	3.7.10 3.7.11	<p>Our understanding is that the term "Relevant Registered User" as defined at TPD G3.7.5(b) refers to the party that was the Registered User at the time of Isolation.</p> <p>Is this the party intended to be referred to at 3.7.10 and 3.7.11 and if so, how does this interact with circumstances where an alternative User is registered in place of the User that was registered at the time of Isolation?</p>
4.	3.7.10 (a) and (b)	<p>We note the distinction between the charges listed in 3.7.10(a) and 3.7.10(b) cf. the position at 3.7.8(b) and existing provision 3.7.4(b) and 3.7.5(b)(i) which refers to and does not distinguish between "all charges".</p> <p>Is this distinction intentional, and if so what is the reasoning behind it?</p>
5.	3.7.12	<p>We note that provision 3.7.12 sets out a different mechanism for identifying the Registered User in circumstances where gas has not been offtaken (but is capable of being so) than is provided for in 3.7.9 (which is presumably intended to deal with circumstances where it has been offtaken – although this is not currently expressly provided for in the wording of 3.7.9) i.e.</p> <ul style="list-style-type: none"> <li>(a) In the circumstances dealt with by 3.7.12, the Transporter is not required to record Meter Data nor to notify the Relevant Registered User;</li> <li>(b) It is not subject to 3.7.15.</li> </ul>

		<p>Our initial view is that the legal text as drafted creates both a different mechanism for assigning responsibility and the amount of charges depending on whether gas has or has not been offtaken cf. the mechanism at existing TPDG provision 3.7.5 which has the same mechanism for assigning responsibility but distinguishes between the charges applied.</p> <p>If this distinction is correct, we would be grateful if you could clarify what the justification for this difference in treatment is. Further, in the event that these distinctions are intended for this to be reflected:</p> <ul style="list-style-type: none"> <li>(a) 3.7.9 would need to be amended to include the words "where gas is or was being offtaken";</li> <li>(b) 3.7.12 would need to be amended to include the wording set out at the start of 3.7.9 from "Where a Supply Meter Point has been isolated" to "from the Total System";</li> <li>(c) The period relevant to the question of whether gas was or was not offtaken would need to be defined.</li> </ul> <p>If the intention is instead for the methodology to stay the same and only the liability to change, our initial view is that it may be "cleaner" to follow the format used at 3.7.5 e.g. by</p> <ul style="list-style-type: none"> <li>(a) Leaving 3.7.9 as it is whereby it covers all circumstances where the meter is capable of flowing gas (with no distinction between whether gas was or was not offtaken) in terms of the mechanisms for assigning responsibility;</li> <li>(b) Deleting 3.7.12;</li> <li>(c) Including 3.7.10, 3.7.11 as subsections to 3.7.9, making clear that they relate to circumstances where gas has been offtaken;</li> <li>(d) Including 3.7.13 making clear that they relate to circumstances where gas has not been offtaken.</li> </ul>
<p><b>6.</b></p>	<p>3.7.15 3.7.17 3.7.18 BR12</p>	<p>Our reading of 3.7.15 in conjunction with 3.7.17 and BR 12, is that the procedure is that:</p> <ul style="list-style-type: none"> <li>(a) If the Relevant Registered User provides evidence of User Activity that demonstrates to the Transporter's "reasonable satisfaction" that another User has been involved in User Activity, it will issue a note to that newly identified User notifying them that they are required to register within one month;</li> <li>(b) If that User doesn't register within one month, the Transporter will then investigate the evidence provided and if the evidence is deemed not to be conclusive, the last registered shipper will still be registered.</li> </ul> <p>Our initial view is that the requirement of "conclusive" evidence represents a high burden of proof on the Relevant Registered Shipper determination of which is at the Transporter's discretion i.e. it means that in the event an identified alternative User simply chooses not to register in response to the Transporter's notification, the only way the Relevant Registered User would avoid being re-registered is if it can demonstrate "conclusively", in the opinion of the Transporter, that the other User should be registered instead. Is this intended?</p>
<p><b>7.</b></p>	<p>3.7.15(d)</p>	<p>Our initial view is that the use of the defined term "User Activity" (which is defined in 3.7.15(a) to refer to four</p>

		particular types of information) in the first part of (b) is inconsistent with the second part of (b) which refers to further types of information not within that definition as further types of evidence (e.g. photos).
<b>8.</b>	3.7.18	Our initial view is that the reference to “a User identified pursuant to paragraph 3.7.9” does not distinguish between the Relevant Registered User and an alternative User.
<b>Business Rules</b>		
	<b>Rule</b>	<b>Comment</b>
<b>9.</b>	BR1	We note that “Shipperless Site” is defined but then not used elsewhere in the document.  Our initial view is that the drafting in its current form could create ambiguity as to whether the BRs are intended to apply to both Shipperless Sites (i.e. those that have been subject to effective Supply Point Withdrawal) and those that have been subject to Isolation only.
<b>10.</b>	BR2, 3 and Res-establishment of Supply Meter Points Business Rules BR 4	We note that a number of different phrases are used throughout the BRs to describe Supply Meters (both different and the same) and in addition that these also differ from the wording used in the Legal Text (3.7.8 and 3.7.9) and existing TPDG provisions (3.7.4 and 3.7.5).  Our initial view is that consistent and precise terminology should be used throughout in order to avoid ambiguity.
<b>11.</b>	BR2	We note the reference to “another party”.  Our initial view is that this opens up a mechanism for triggering the 425 process which is not otherwise dealt with by the BRs or Legal Text, which refer only to circumstances where the Transporter identifies the relevant meter.
<b>12.</b>	BR6 and Res-establishment of Supply Meter Points Business Rules BR 6, 13, 14 – 17 and throughout	We note that the throughout the document there are a number of references to “relevant Shippers”, “Shippers” and “Users”.  Our initial view is that references to “relevant Shippers” should be defined in such a way as to be clear which Shipper is being referred to in each instance.
<b>Re-establishment of Supply Meter Points Business Rules</b>		

13.	BR2	<p>We note the provision that "During the Gas Safety Visit, or any other visit, the Transporter will identify if a meter is connected..."</p> <p>Our initial view is that this places an obligation on the Transporter to carry out such a check whenever it visits a Site. We would be grateful if you could confirm whether this is intended?</p>
14.	BR3	<p>We note that the term "Service" has not been defined.</p>
15.	BR4	<p>We note that BR4 provides that the information the Transporter is to use its reasonable endeavours to record should be that which is "deemed as appropriate" for the Shipper to re-register the site. It then states a set of specific details which the data "should include".</p> <p>Cf. the proposed Legal Text 3.7.8 which provides that it should be "Meter Information" (i.e. the information set out in the UK Link Manual) and any tags and stickers.</p> <p><u>Comment</u></p> <p>Our initial view is that:</p> <ul style="list-style-type: none"> <li>(a) BR4 does not specify how the question of whether the information is appropriate is to be determined;</li> <li>(b) Is inconsistent with the Legal Text by introducing an element of discretion to the Transporter in determining the information that should be collected.</li> </ul> <p>We would be grateful if you could confirm whether the specific types of information listed in BR 4 are consistent with that referred to in the UK Link Manual.</p>
16.	BR 5 & 6, BR 21	<p>Our initial view is that the reference to Xoserve in brackets following the words Transporter:</p> <ul style="list-style-type: none"> <li>(a) Potentially restricts the application of the BRs to Xoserve such that the rules would need to be amended should another legal entity become the Transporter;</li> <li>(b) Is potentially inconsistent with the other references to Transporter within the BRs which do not include reference to Xoserve (e.g. BR1).</li> </ul>
17.	BR6	<p>We would be grateful if you could clarify whether the reference to the "Withdrawn Supply Point should instead refer to an effective Supply Point Withdrawal.</p>
18.	BR 5 - 9	<p>We note that BRs 5-9 appear to place a series of obligations on the Transporter to carry out certain actions in order to identify who the Visit Data should be sent to. The rules indicate that only after these activities have been</p>

		<p>carried out, and no alternative User identified, will the information be sent to the last registered shipper.</p> <p>Cf. The Legal Text which imposes no obligation on the Transporter to take pro-active action. Instead, the position is that the information will go to the "Registered Shipper" i.e. the person in whose name the supply point is registered (in the case of an Isolated site) or the "Relevant Registered User" i.e. the person in whose name the supply point is registered at the time of Isolation (in the case of effective supply point withdrawal) unless it receives the information set out at 3.7.15.</p> <p>Further, we note that the information referred to in 3.7.15 is not consistent with that referred to in BRs 5 – 9. For example BR6 refers to "registrations", which do not appear to be referred to in 3.7.15 and to the undefined term "confirmations" as opposed to the defined "Supply Point Confirmation" at 3.7.15(a)(i).</p>
<b>19.</b>	BR 5 – 9	<p>Further to the above, our initial view is that the current drafting creates ambiguity as to who the Transporter:</p> <p>(a) should send the Visit Data / Meter Data to; and (b) what the process in each scenario is.</p> <p>For example:</p> <p>(a) BR5: it is not clear how such duplication would be resolved (see also BR 21); (b) BR6: the second sentence refers to two potential parties, the previous registered Shipper and the Shipper who has been identified by a Shipper Activity report as having been involved with Shipper Activity post the previously registered Shippers withdrawal date, but is unclear as to which party will then be sent the Visit Data. Consistency should also be ensured with BR7.</p>
<b>20.</b>	BR 5 – 9	We note that Visit Data is not defined. Our initial view is that consistency in terminology should be ensured between this, BR 4 and Legal Text "Meter Data" definition contained at 3.7.8.
<b>21.</b>	BR 5 – 9 and BR 13	We note that currently references to issuing Visit Data to the relevant User do not specify who (e.g. the Transporter) is to do the issuing.
<b>22.</b>	BR 5- 9	We note that there are a number of references to types of "Shipper Activity", (upper case and lower case) / 3.6.15. Shipper Activity reports. Our initial view is that the terminology used should make clear what is referred to at each stage, and whether this is the same as the User Activity referred to at 3.7.15
<b>23.</b>	BR 8	<p>Our initial view is that this may not be consistent with 3.7.15.</p> <p>For example BR8 refers to circumstances where a "MAM / Meter Worker" updates the C&amp;D Store. Cf. Legal Text 3.7.15(c) which appears to be broader than this, referring to any "Non-Code Party".</p>

<b>24.</b>	BR 10 and 11	<p>We note that this provides that if the previously registered Shipper provides evidence of other Shipper activity within the <u>three month period following notification</u>, the Transporter will notify the other Shipper and the other Shipper will have 1 month to register.</p> <p>Our initial view is that this is inconsistent with 3.7.15 which does not limit this to the above 3 month period.</p>
<b>25.</b>	BR 11	<p>We note that this refers to what is phrased as an exhaustive list of what constitutes Shipper evidence and customer evidence cf. Legal Text 3.7.15(b) which refers to a non-exhaustive list which appears broader than the above definitions.</p>
<b>26.</b>		(a)
<b>27.</b>	BR 13	<p>Our initial view is that it is not clear where this fits in the process i.e. is this intended to be the consequence that results from the identification of a Shipper following the process set out in BR 5 – 8.</p>
<b>28.</b>	BR 14 and 15	<p>We note the reference to “contractually register” cf. simply “register” in the Legal Text.</p> <p>We would be grateful if you could clarify whether there is intended to be a distinction between these terms, and if not, ensure consistency between them.</p>
<b>29.</b>	BR 16 & 17	<p>We note that these are not reflected in Legal Text.</p>
<b>30.</b>	BR 18 & 19	<p>We note that the BRs as currently drafted provide that in the case of Isolated only sites, the last Registered Shipper will automatically be liable for the site, and that in these circumstances the preliminary checks by the Transporter and the opportunity to carry out an investigation do not apply.</p> <p>(a) Our initial view is that this is inconsistent with Legal Text 3.7.8 and 3.7.15</p> <p>(b) We would be grateful if you could confirm whether, if this is what is intended, it could allow a situation where the last Registered Shipper could have correctly isolated its own meter and has now ended up liable for a supply meter installed illegitimately or be another Shipper who has failed to register it properly.</p>
<b>31.</b>	BR 19 & 20	<p>Not reflected in legal text.</p>
<b>32.</b>	BR 21	<p>Not reflected in legal text.</p>
<b>33.</b>	BR 22	<p>Not reflected in legal text.</p>

		In addition, our initial view is that it is not clear whether this is intended to apply to Isolated only sites as well as effective Supply Point Withdrawal sites.
<b>34.</b>	BR 24	Please could you clarify whether the cross-references to BR11 and BR13 are correct.

**Ofgem**

**Markets Legal**

**10 July 2013**