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Dear Julian

Re: Status of assets downstream of Primary ECV on Primary/sub-deduct networks

At the October 2005 meeting of the UNC Distribution Workstream, Total Gas & Power advised that it had written to Ofgem raising concerns relating to the "ownership and responsibility of the pipe network and assets downstream of the Primary Emergency Control Valve (ECV) in a prime/sub-deduct configuration".

Total agreed that its letter could be shared with members of the Workstream to provide an opportunity for comment. The letter was duly issued with the Workstream minutes by the Joint Office on 2 November 2005.

In accordance with the action arising at the Workstream we have since considered carefully the matters raised by Total and have provided a full response:

Rationale

Prior to privatisation the transportation network was owned by, and was the responsibility of, British Gas. As far as we can tell, there has been no transfer of any assets to customers either individually or wholesale. This implies that the pipework downstream of the primary ECV is still owned by the heirs to British Gas; either the Transporters or Centrica. As this pipework has been in continual use for a substantial period of time, ownership of these assets cannot be simply abandoned. If this is the case then the licence obligation is a moot point; the Transporters have responsibility for their property, no matter where it is located.

1. While it is accepted that British Gas plc and its predecessors owned most of what would now be the Network (as defined in the Gas Safety Management Regulations (GSMR)1996), the Network ends at the outlet of the first emergency control valve (ECV). As this is upstream of the Primary meter, the ownership of the Network is irrelevant to the ownership of the installation pipework comprised within a Sub-deduct arrangement.

The rationale presupposes that British Gas plc owned the installation pipework in the Sub-deduct arrangements and would therefore have to have transferred ownership to divest itself. This is incorrect for two reasons:

- British Gas plc never owned the pipework in the first place. The vast majority of installation pipework fitted in Great Britain between 1948 and 1996 was installed by British Gas plc or its predecessors but it is illogical to suggest that, for example, the pipework between a meter and

an appliance in a consumers property is owned by National Grid simply because British Gas fitted it and there is no record of transferring ownership to the consumer.

- As a matter of law National Grid believes that installation pipework, fittings and appliances downstream of the Network that are permanently affixed to premises are fixtures and fittings and so in the ownership of whoever owns the premises. There is no specific case looking at the status of installation pipework but in *Melluish –v- BMI*, the House of Lords looked at central heating systems and found that if they were fixed in a fairly permanent way then they were part of the land whatever the parties might declare.
2. Support for the above position can be found in both primary and secondary legislation. Firstly paragraph 29 to Schedule 2b to the Gas Act expressly provides an exception to the rule of fixtures and fittings for meters or gas fittings (which includes pipes) which are downstream of the service pipe and owned by a Gas Transporter or supplier that are marked by the owner. Secondly the Gas Act 1986 (Exemptions) (No.1) Order 1996 created an exemption so that persons conveying gas in pipes to secondary meters immediately prior to day the Gas Act 1995 came into force did not require a gas transporters licence. This exemption is directly applicable to Sub-deduct arrangements. Landlords supplying gas through secondary meter are covered by an exemption in what is now Sch2A to the Gas act 1986 (as amended).
 3. British Gas made no effort to acquire any rights, easements, etc, to safeguard the right of the pipework to remain in situ, despite the mixed ownership of many sites, and did not mark the pipes with any mark of ownership in the way the meters were marked to rely on para. 29 Sch 2b (see above). This is consistent with British Gas not being the owner of anything except the Supply Meter Installations.

The prime and subs database explicitly includes the information on the location and setup of sub-deduct sites, in the same manner as sites directly connected to the network. Standard Condition 5 of the transportation licence specifies this requirement. There is no corresponding requirement for the Transporters to maintain a database of supply points on iGT networks. xoserve also bills suppliers for each sub-deduct site individually, rather than as an aggregate as it does iGTs with CSEPs), Taking this separate billing and record-keeping into account, there is an implicit relationship, and hence an implication of ownership, between the Transporters and sub-deduct sites contrary to their current stated position.

The existence of the licence condition is not evidence of any implicit ownership of pipework by National Grid; if anything it shows the opposite. Special Condition 5 of the standard Gas Transporters licence is 'switched off' in National Grid Gas's distribution licence. The equivalent condition is special standard Condition A50. If National Grid owned the installation pipework within Sub-deduct arrangements then such pipework would be connected to a pipeline system operated by National Grid and Condition A50 (13) would not be needed.

The installation of new Sub-deduct arrangements is currently prohibited so all current primary/sub-deduct arrangements have been in situ for some length of time, most since before privatisation. These networks have been maintained since they were installed and we would presume that Transporters have undertaken this work without the knowledge of consumers and Shippers, as it does on the rest of its network. This again implies ownership of such pipework by Transporters.

National Grid does not undertake works other than those required as a consequence of its emergency service obligations (described below).

Issues with consumer Ownership of sub-deduct networks.

Our comments above notwithstanding, if this is not the case and Transporters are correct in their assumption then we have the following issues:

At present Transporters provide an emergency service to all consumers that are connected directly to their network. They also extend this service to iGTs via service contracts. However sub-deduct customers are not covered explicitly by any such contract and as Transporters claim their responsibility ends at the primary ECV, these customers are not formally covered by any emergency provision, except by Transco disconnecting such customers at the primary ECV. This would of course unduly disconnect customers that have no supply problems. We acknowledge that Transco currently does cover such sites on a goodwill basis at present. We do not feel that goodwill is sufficient to ensure that customers are protected which is why license conditions are imposed on Transporters to provide such services to other customers. This goodwill can also be withdrawn at any time. This is more likely to incur in the fully competitive, multi-transporter environment.

The duty on Gas Transporters to attend escapes and make safe extend downstream of the end of their network by virtue of Regulation 7 paragraph 4 Gas Safety Management Regulations (GSMR) 1996. It is therefore incorrect to claim that National Grid attends gas escapes at Sub-deduct premises on a goodwill basis only.

If the site sub-deduct premises are owned by separate customers, then the gas that is transported between the primary ECV and the sub-deduct ECV must be transported by a transporter – in the same fashion as iGTs must do so from a CSEP to their customers. If the site owner does not own a gas transportation licence (unlikely), then they are unwittingly committing a criminal offence,

The conveyor does not need to be a Gas Transporter because of Exemption Order no.1 (see above).

As stated above, if a Transporter's responsibilities end at the Primary ECV, then there are a significant number of site owners who have responsibility and ownership of micro transportation networks. As these owners are currently not covered by the obligations placed upon Transporters, these sites may not maintain these networks adequately, thereby jeopardising safety. We acknowledge that such owners should have transportation licences if required, but at present none do so and consumer safety is being put at risk by this unlicensed arrangement.

Sub-deduct arrangements are covered by the Gas Safety (Installation and Use) Regs 1998. All persons who work on installation pipework have to be registered with CORGI. The amount of pipework in question is very small compared with the totality of installation pipework within Great Britain. We do not believe that owners and occupiers of premises supplied via Sub-deduct arrangements are any less conscientious than other owners of installation pipework or that only a Gas Transporter can safely maintain such pipework.

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