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Dear Steve

Open letter consultation on responsibility for Uniform Network Code Sub-Deduct Arrangements

National Grid owns and operates four of the eight gas distribution networks in Great Britain, as well as the national gas and England and Wales electricity transmission systems. In addition we operate the electricity transmission system in Scotland. This response is on behalf of both National Grid's gas transmission and distribution businesses. It is not confidential and may be published on the Ofgem website.

National Grid shares Ofgem's concerns with regard to the maintenance and safety of sub-deducts, and is committed to working towards a solution which addresses those concerns. Like Ofgem our preference is to find a resolution that removes uncertainty and thereby delivers clarity to all parties on their respective responsibilities for sub-deduct arrangements.

There are around 1,200 sub-deducts connected to our four gas distribution networks and one connected to the national gas transmission system (NTS). As Ofgem outlines in its consultation, these sub-deduct networks were constructed by British Gas prior to March 1996, in order to provide a pragmatic solution to accommodate gas supply requests from customers. In the case of the NTS arrangement; ownership and responsibility for the continuity of supply, repair and renewal is well established and lies with the downstream operator. There is therefore no need to address this issue further with regard to NTS sub-deducts.

Ownership of sub-deduct arrangements

While we propose a potential way forward to addressing sub-deduct networks within this response, we do not accept that National Grid is the owner of any sub-deduct network for the reasons previously set out in a letter to Ofgem in November 2005 and repeated below:

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 consumer's 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 and did not require a gas transporters licence. This exemption is directly applicable to Sub-deduct arrangements. Landlords supplying gas through a 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 any assets other than the Supply Meter Installations”.*

In 2006 having examined relevant sections of the Pipeline Safety Regulations, Gas Act, Gas Transporter Licence and Uniform Network Code, Ofgem's internal legal opinion was that, “none of BG successor entities holds responsibility for the pipe-lines beyond the emergency control valve”.

Ofgem then sought further external advice from Blackstone Chambers in December 2006 who concluded that;

- “Relevant legislation did not appear inconsistent with Ofgem's conclusions”
- “However, no sufficient clear stipulation in the legislation to render the position free from real doubt”¹

In the absence of evidence to the contrary and based on its own views and those of Ofgem in 2006, National Grid does not believe there is any case for it to be considered as the owner of any sub-deduct networks. Notwithstanding the above, opinions on ownership will, in any event, need to be tested with property owners, who may have views of their own on responsibilities and impacts on their assets. This particular aspect of the sub-deduct arrangements should not be underestimated and will

¹ Both Ofgem's opinion and external legal advice summaries were presented by Ofgem to the UNC Distribution workstream 22 March 2007.

be influenced by a variety of factors not necessarily based on the original circumstances of the installation.

Potential way forward

While National Grid does not agree with Ofgem's contention that National Grid Gas could be the owner of sub-deducts, we do support Ofgem's reasons for wishing to address the issue. We would also support commencing a fully funded programme within NGG's networks to assess the risks and liabilities and begin to resolve both ownership and maintenance of sub-deducts.

Due to the need to formally establish ownership arrangements with each property owner and lack of reliable data on condition of these networks, we do not consider it either practical or within National Grid's interests to undertake a wholesale adoption policy. Particularly as it may take a number of years to complete a programme of agreeing ownership and either adopting if fit for purpose, engineering out, relaying or disconnecting sub-deducts.

We would propose a policy whereby each property owner would be contacted and subject to the status of the sub-deduct and the owner's consent, we would complete the necessary works and then adopt the assets. The basis of completing works would need to be agreed with Ofgem, but might normally be on a lowest whole life cost, fit for purpose basis, with a preference for engineering out, where practical.

Where the owner confirmed they wished to retain the assets, then no works would be undertaken unless funded directly by that individual and no adoption would take place. A record would be kept to ensure the status of the sub-deduct was clearly understood and that such responsibilities could be clearly addressed to the relevant party.

Whereas National Grid's proposal could be utilised for the majority of sub-deducts, there will inevitably be a range of complications and risks such as the sub-deduct being found to be in an unsafe condition, requiring disconnection, either on a temporary or permanent basis, or the property owner being unwilling to grant access or easement rights for future maintenance. The range of complicating scenarios could be numerous and GDNs, Ofgem and the HSE might want to explore these and associated policy development to address such circumstances.

Funding would be required to manage the programme, cover legal and administration costs as well as those of engineering works. Ofgem's recognition of the need to address costs as part of the current price control is acknowledged and we look forward to exploring potential mechanisms should a programme such as that proposed by National Grid be developed further.

In the meantime, National Grid would be willing to support any further dialogue with Ofgem and other stakeholders in order to move the sub-deduct issue forwards.

Yours sincerely

Paul Rogers
By email.

