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Friday 6<sup>th</sup> May 2011

**WWU response to open letter consultation on responsibility for Uniform Network Code  
Sub-Deduct Arrangements (Ref: 33/11)**

Dear Steve,

In response to the open letter dated 18<sup>th</sup> March 2011, which outlined Ofgem's provisional position, the view of Wales & West Utilities Ltd is set out below.

Generally, we agree with the comments made in the section entitled "Background – what is a sub-deduct network". Particularly, that a sub-deduct network is a configuration of pipe work **downstream** of the gas transporters network. As indicated in the letter, we also consider it likely that these were installed historically by British Gas. It is difficult, therefore, to know the individual circumstances in which these pipes were laid. We tend to agree that they were put in to give customers the cheapest possible new connection at the time of installation. It is quite possible, however, that ownership of premises which initially might have been through associated companies, or single ownership, may over the course of time have become split up. Consequently, the parties are no longer associated as they once were. It is quite possible that what was a perfectly lawful arrangement at the time of installation became later unlawful for reasons outside the control of the transporter.

We agree that the statutory and regulatory arrangements are unclear as to the supply, maintenance, repair and renewal of individual sub-deduct arrangements quite simply because they may not all share the same legal characteristics. This consultation sheds no further light on that matter. However, it does not appear to us that pipes downstream of the primary meter can be described as 'service pipes' within the meaning given to that phrase under the Gas Act 1986. It appears to us that the service pipe must stop at the first meter. If it was considered that the pipe work downstream of the first meter was not part of the transporters network it is no surprise that the transporter would have no record of them. These pipes would be the responsibility of the landowner and or premises concerned. It appears to us most likely that the pipes downstream of the first meter belong to the owner of the land in which they are situated as being fixtures (see Melliush (Inspector of Taxes) versus B.M.I.(No 3) Limited 1995 AC 454).

Similarly, the person in control of the downstream network is the person in control of the primary meter. This party has the absolute right to remove the meter or dictate the manner in which gas flows through it. The rights of the parties downstream depend on private arrangements between the individuals. We therefore disagree with the statement “it is unlikely that the site owner or operator would be responsible without knowledge of such responsibility”. This is not a principle understood under the English legal system. The relevant principle of English law is that ignorance of the law is no defence. Therefore whether a party is or is not aware of its obligations, whether criminal or civil, is no indication as to whether it holds any particular capacity or has any obligations.

Therefore, we disagree with the provisional view for the same reason. As your letter indicates, the 2011 Gas (Exemptions) Order made specific provision for sub-deducts and it is up to the operator of them to ensure that it complies with its obligations. In light of this, we express no views as to whether National Grid Gas is, or was, the operator. We do not consider that it sold or otherwise transferred any responsibilities in relation to sub-deduct networks to GDNs at the time of sale as we have no evidence that it had any responsibility to transfer in the first instance.

We agree that it is prudent for the matter to be addressed, but we do not agree that requiring existing gas transporters to acquire the networks is an appropriate solution. Indeed we do not consider that there is statutory power to force a person to acquire assets particular in circumstances where it would introduce strict liability under the Pipelines Safety Regulations 1996 to ensure that they were in good repair and efficient working order (amongst other duties). There appears to be no evidence that any network is in imminent danger. We do not therefore consider it necessary for existing gas transporters to assume the burden of the networks and their maintenance in advance of appropriate funding being made available for an agreed programme of work. Appropriate funding provisions may include, but not be limited to, the provision of the quoted survey value (c. £5m for Wales & West), to be managed either through an additional allowance or as an agreed ‘cost’ under the ‘Miscellaneous’ term (MPt) of Special Condition E3.

Subject to appropriate funding provisions, and the broad support of appropriate stakeholders, we would have no issue with commencing the relevant risk assessment and reengineering works prior to the next Price Control. However, this would be reliant upon the written consent of individual property owners before accessing or carrying out works affecting their property in order to mitigate the risk of customer complaints associated unnecessary or unplanned supply disruption. We would also like to note that over the course of the project alone, Wales & West Utilities experienced net reductions of 28 Primes and 78 associated meter points. This encompassed 11 found Primes and 33 associated meter points giving a gross reduction of 39 primes and 111 associated meter points. This provides an indication that there may be an unknown additional population of sub-deduct networks for which there would need to be an ongoing mechanism to apply for funding as we are unable to quantify any unknown additional Prime & Sub arrangements at this time.

In summary, we disagree with the view that either NGG or the GDNs should automatically assume responsibility for sub-deduct arrangements going forward. Adoption should only take place after:

- The property owner has given consent to adoption
- The networks have been surveyed and either designated in adequate repair or have been replaced, by priority, upon a risk basis

- There is no other impediment which prevents adoption or work being carried out i.e. associated easements and/or land transfers.
- Stakeholders have expressed their support
- An appropriate funding mechanism has been agreed

We trust our comments are of assistance. Please advise if further information or clarification is required at this time. Queries should be addressed to Simon Trivella, [simon.trivella@wwutilities.co.uk](mailto:simon.trivella@wwutilities.co.uk) telephone 02920 278550.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Edwards", with a long, sweeping underline.

Steve Edwards