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Wales & West Utilities Limited (“WWU”) response to Statutory Consultation on SpC 3.20 (Diversions and Loss of Development claims reopener (DIVt))

Thank you for the opportunity to respond to this consultation. WWU is a gas transporter serving 2.5 million supply points in Wales and south-west England. This response is not confidential and may be published by Ofgem.

We support the changes as they amend the wording of the re-opener to meet the original policy intent which was to allow licensees to recover:

- a) reasonable alternative solutions that avoid Diversion Costs; and
- b) costs of rectifying or mitigating damage to Network Assets due to adverse environmental factors beyond the control of the licensee.

Point (a) would allow the network to fund alternative solutions such as offering alternative land to a developer that would avoid the need to divert a pipeline. Point (b) will expand the scope of the re-opener from soil erosion to wider environmental factors.

The addition of the third leg of the scope of this re-opener that covers environmental damage was added fairly late in the licence drafting process for the GD2 licence which explains why the wording does not meet the policy intent and why 3.20.4 (c) mentions the costs of diverting gas assets due to adverse environmental factors, but other parts of the condition refer to soil erosion.

We appreciate Ofgem’s support and flexibility in addressing unintentional constraints in the scope of the re-opener; however, we are concerned about the process used. Whilst we do not object to the change, we do not agree with the process used by Ofgem and would not like it to set a precedent for any future modifications.

Wales & West Utilities Limited

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The changes will only come into effect after the application window for the re-opener has closed. The window for submission of re-opener claims was 25th to 31st January 2024. The statutory consultation was issued on 26th March 2024; however, we were not aware of the proposal to widen the wording until shortly before the window for the re-opener claims closed. This meant that we would not have been able to add projects into our re-opener application that will be permitted under this scope widening had we wished to do so. In the event we had no projects that we wished to add; however, this may not be the case if this process is used in future. We repeat that we recognise and appreciate that Ofgem was flexible in addressing issues identified and suggest that publishing a letter, sufficiently before the application window closed, stating the intention to make the changes by means of a statutory consultation would have been appropriate and would have given parties time to consider whether to adjust their applications.

Yours sincerely,



Richard Pomroy
Regulation Manager
Wales & West Utilities