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22 October 2007

Dear Joanna,

GDPGR: Initial Licence Drafting Consultation

I am writing further to the above consultation and attach our detailed response. The response is set out in the order of the Chapters in the Consultation. We offer answers to the specific questions raised in the consultation and general comments on the detailed drafting of particular Licence Conditions.

If you require any further clarification please contact Chris Talbot, General Counsel on 02920 278542 or chris.talbot@wwutilities.co.uk.

Yours sincerely,



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24 hour gas escape number
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Wales & West Utilities response to GDPCR: Initial Licence Drafting Consultation

CHAPTER 2

Question 1: Should shippers continue to raise Incoming Adjusting Events to the exit incentive?

We consider that the proposed drafting does contain the appropriate balance between the interests of gas transporters and, through shippers, consumers.

Question 2:

How should an IAE, associated with TMA costs, be constrained without limiting costs to permit costs?

We consider that when the TMA becomes effective, since there will be an ongoing cost directly linked to the number of permits, it would be better in principle for permit costs to be included in SC E3 as a pass through cost and assessed in the same manner as prospective water ingress etc costs.

The other TMA related costs which we would request be included are as follows

- I) the introduction of the noticing and charging regime pursuant to section 74 New Roads and Street Works Act 1991 in Wales (currently the section is only law in England) other than the payment of overrun charges themselves
- II) Costs arising from the changes to Works Type definition in TMA
- III) The costs of Fixed Penalty Notices in excess of a 90% compliance rate. From our information we consider that compliance above this level would cost consumers more than the cost of the penalties themselves
- IV) Changes to the Inspections Code of Practice and s75 NRSWA 1991 as amended by TMA

Question 3: Are there any other changes to SC Part E that are necessary to make the GDPCR effective?

We consider that the overall structure of the draft conditions, subject to particular points mentioned later, is that which is necessary to make the GDPCR effective.

Question 4: Are there any changes to SC Part E that are inappropriate?

Please see our comments on the individual conditions. We note that work is still ongoing however in relation to, for instance, shrinkage and exit incentive so we do not comment on those at this stage.

Question 5: Are there any other changes to SC Part E that are desirable but not necessarily associated with GDPCR?

We consider that, subject to our comments on the individual licence conditions, there are no such changes that are necessary or desirable.

As regards the individual licence conditions:

SCE 1

We have no comments at present on the current drafting.

SCE2

We have no comments on the present drafting other than that RPI_t is expressed to be divided by 100 which appears incorrect

SCE3

Paragraph 1 refers to “the maximum *allowed* transportation revenue” (this phrase is also referred to in E4, E5, E6 and E7). This phrase is not defined in the licence and appears to us to be the same as “maximum Distribution Network transportation activity revenue” and should be amended accordingly.

RBE_t refers to “financial year” rather than “formula year”

We consider the provision in paragraph 3(b)(1) making the value for RB_t zero unnecessarily draconian. While we acknowledge that, where there is an increase in business rates on revaluation, the licensee should use reasonable endeavours to minimise it, that should mean for the purpose of 3(b)(1) that the default value should not be zero, but the amount that the licensee was paying before the revaluation, if lower than the re-valued amount or the re-valued amount, if lower than the amount payable before the revaluation. There seems to be no rationale for disallowing the pass through completely or putting complete disallowance at the Authority’s discretion. We also suggest that the mechanism should be re-worded so that the licensee can pass through the increase unless the Authority directs a different figure (as in SC E7(9)).

In paragraph 6 we consider that the pass through items TPW_t and TPWR_t should be increased by RPI in the formula because the figures being used are in respect of formula year t-1.

SCE4

In the definition of MR_{t-1}, the phrase “maximum revenue” should read “maximum Distribution Network transportation activity revenue”.

SCE5

We have no comments on the format of the present drafting.

In paragraph 2 and the definition of MRSA, the formula includes the following “minus RPI_t”. Can Ofgem clarify this drafting, as it seems very odd that an RPI factor would be something which is deducted from a calculation, rather than be used as a multiplicand. We believe the formula should say “divided by RPI_t”

SCE7

In paragraph 2(b), we consider that the phrase “all reasonable steps” is unnecessarily onerous, the test in the licence generally merely being that of “reasonable steps”.

In paragraph 3(a), the reference to “obligations or requirements” seems somewhat narrow and would, in our view, be better expressed as “obligations, requirements or events” as the events or circumstances in paragraph 2(c) are not easily understood, on their own, as being

described as “obligations or requirements”. This comment applies also to the phrase wherever it appears in the condition.

In paragraph 10(a), there is reference to the phrase “base revenue”. This phrase is not otherwise defined and it is suggested that a different phrase consistent with licence definitions be used to ensure clarity of what is meant. However we consider the materiality threshold given the efficiency challenges being placed on transporters excessively high. If there is to be a threshold at all it should be set at de minimis levels.

In paragraph 11(a) and 11(b), we believe the drafting means that, for the purpose of meeting any thresholds, one can consider a single category of costs or aggregate categories of costs. However this is not, in our view, clear, particularly in relation to paragraph (b) and we would request that the drafting be reviewed to make the intention more clear.

In paragraph 12(b), we agree that it is helpful for the Authority in making a determination, to be able to make a determination in respect of future years costs likely to be incurred as this is likely to reduce the need for year on year applications by the licensee or a shipper. However, we consider that there should still be a default provision to ensure that in such circumstance, where the Authority has made a determination of expected costs for future years which turns out to be inaccurate, the licensee/shipper should be able to reapply and that the IAE provision should apply to the whole of the costs which the licensee incurs in that year and not merely the balance between what the Authority prospectively allowed and the licensee has suffered. This is because merely taking the balance into account could mean that a threshold would not otherwise been reached, which would have been reached if the Authority had not made the assessment in respect of future years.

SCE8

We question, in paragraph 2, whether the definition of “Sigma all i” is correct. We think it should just say “means the sum of “Sigma all i for LDZs i”. Repeating the detailed formula seems to square the calculation.

We understand that there are revisions to be made to the formula for GDPRC.

There appears to be some wording missing in the definition of “Sigma all d”.

SCE11

We agree with the Authority that this Condition can be removed. In our view, the way the legal drafting and definitions are now set out in the licence, it is as a matter of legal construction clear where costs and revenues should be allocated between the various activities within the licence and that therefore the Authority has all the powers it needs to ensure that revenues and costs are correctly allocated. To the extent that this Condition suggests that there may be powers for the Authority to require allocation of costs and revenues in some other fashion we consider it to be undesirable from a good regulation point of view. The Condition was introduced in 2002 when the then Transco licence was split into TO, SO and LDZ components and it may not have been quite so clear as it is for a DN licence, where costs and revenues should be allocated. However, as we indicate above, both experience and the current legal drafting render the condition unnecessary.

SCE13

While we note the Authority’s comments in relation to metering generally, we would ask the Authority to note the following matter, which relates to the metering conditions, which we

consider is an important distorting factor to metering competition.

In 2002 Transco's Special Conditions (31 and 32) contained the equivalent of this Standard Condition E13 and also what is now Standard Special Condition A46. Both Conditions were Special Conditions within Transco's Licence and were both deliberately part of Transco's metering price control. Unfortunately, at the time of network sale, it would appear the purpose of Special Condition 32 was not fully understood and it was moved from the price control condition to Standard Special Condition A46.

In 2002 also we would suggest that an error was made in the drafting. The purpose of Standard Special Condition A46 was set out in paragraph 2.94 of Ofgem's Draft Proposals on Transco's Price Control in June 2001. For completeness, we repeat the wording of that paragraph here "the tariff caps defined above only cover some of Transco's metering services. Ofgem is proposing to regulate Transco's other metering charges (including its charges for any new services it may introduce) through a non-discrimination licence condition. In effect the tariff caps would act as reference points, upon which on all Transco's metering charges could be assessed against on this non-discrimination obligation".

Unfortunately, the final drafting of this Condition in 2002 was not made to say "to avoiding undue discrimination or preference *in charging*", which appears to have been the intention of the Condition.

The consequence of the Condition as drafted is that it requires a transporter to avoid discrimination and preference in not only charging but also the provision of metering services. This means all metering services, whether last-resort (SSC A10), domestic or otherwise, on the licensee's system or elsewhere, are covered by it. This elevates the licensee's obligations for metering to those of the statutory requirements of connections, which we do not believe was ever the intention. Indeed, our understanding of the intention of metering unbundling in 2001, was that it should not extend the licensee's obligations for the provision of metering services beyond the last resort domestic metering in Standard Special Condition A10, the licensee's obligations, so long as they existed through contract and under UNC, for industrial and commercial meters, and, where appropriate where it was obliged to supply metering services pursuant to the Competition Act 1998. If Standard Special Condition A46 is not corrected, it potentially means that the licensee has to maintain a metering and meter-work capability in a competitive market as it does for connections, not merely for its own domestic last-resort but for all other metering activities, even though in effect the market is already providing those from elsewhere and the licensee has it lost its third party meter contract work. We do not believe that this is in the interests of consumers let alone the licensee.

CHAPTER 3

Question 1: Are our proposed changes to SSC in Part A and D appropriate?

We will comment in more detail when looking at the individual conditions, but in overview in respect of SSCA19, 20, A21 and A22 we do not consider that the Authority has produced any evidence for the need for the changes insofar as they represent a move from the current licence conditions that, in principle, require the licensee *to have in place arrangements* that, for instance, secure the arrangements for access to premises. In those respects the current drafting of the licence has worked, so far as we are concerned, perfectly satisfactorily. We are not aware that the Authority has ever had to undertake an investigation, let alone enforcement action in relation to the operation of those provisions and they have over the years, and we believe that the conditions may have been in place since privatisation, provided appropriate and satisfactory security and benefit to consumers. We do not consider that the Authority has shown any adverse interest to the public which would cause the need for the change.

The changes reduce the requirements to individual, case by case, individual by individual requirements and therefore represent a significant exercise in micro-management and micro-regulation of the licensee's activities, which we do not consider in the public interest.

As a matter of general drafting we would rather see the phrase reasonable endeavours rather than reasonable steps as the former has a well understood legal meaning.

We do not consider it appropriate to include proposed changes to Standard Condition 4B as these are not related to the Price Control Process.

Question 2: Is the information provided by the GDNs under the SSC D5 licensee's procurement and use of system management services, useful. Is there any specific additional information that GDNs can provide to increase transparency in the use of their constraint management tools?

We consider that the drafting changes proposed by the Authority are useful and appropriate.

Question 3: Is it appropriate to remove D7 - exit code statement. If so, why?

We have no present view on this condition.

Question 4: How should the scope of A40 - Price Control Information - be defined to capture information from GDN affiliates or related undertakings?

We do not consider that this is necessary as the Authority already has this power under the terms of the general information gathering provisions and the ultimate controller undertakings in respect information which relates to licensee. The licence should in principle only cover the licensee.

Question 5: Do respondents believe that the powers of the Authority should be similar to those that exist in respect of connection charges on other categories of gas and electricity network?

We are not clear what the question means in respect of other categories of gas network, which are only regulated under the Gas Act and under Condition 4B. We do not consider that regulation similar to electricity networks is needed as gas connection activities are significantly more advanced in a competitive sense. The Authority should be moving away from regulation, not increasing it in the gas connections sector. In addition, where there are individual issues over the appropriateness of gas connection charges, Ofgem has powers under Sections 21 and 27A of the Gas Act, not only to make individual determinations, but to make them of generic application as well. There is therefore a clear, appropriate and a proportionate means of dealing with such matters. Ofgem and IGTs have in the past made it clear to transporters that failure to amend charging methodologies, in one case relating to specific reinforcement, would result in repeated requests for determinations. Having the prospect of repeated determinations is a powerful and appropriate incentive to the transporter concerned to modify its position. That system has worked adequately in the past and we do not consider that therefore more intrusive regulation is required.

Question 6: Do respondents believe the need to consult prior to amending the charging methodology is unduly onerous?

For the reasons given above, we do consider that the proposals are unduly onerous. While we accept that in changing methodologies and prices, there needs to be some lead in time (transporters already need to give two months notice of changes to prices to shippers) in order to allow shippers to adjust their own pricing to customers, the length of time of any such change should be kept to a minimum. This will not be possible with the proposed changes. Not only does it delay the process and delay necessary appropriate changes, it increases the potential for significant amounts of requoted work or for customers delaying or bringing work forward. This creates a very significant administrative burden caused by re quoting quotations. It also increases the potential for time lag between cost incurred and charges being capable of being raised, which Ofgem has criticised through its consultants, through this GDPCR process. Such a proposed change merely helps to institutionalise that time lag.

Our individual comments on the current drafting of the Conditions are as follows:-

SSCA15

We would suggest that the concept of the User Pays charges is fundamentally the same as what the transporter's licence used to call "services to shippers not ordinarily required". These services are still the supply of transportation services to shippers within the terms of the licence and we see therefore no reason why the methodology for the charges should not in principle be the same as for all other transportation charges, with the exceptions on timing, so that a transporter is able to introduce such charges at any time during a year and, perhaps, with a lesser than 150 days prior notice, in order to allow commercial flexibility. In terms of determining what nature of service should be a "User Pays" service the process should be the same as for determining services treated as excluded services for the purpose of SCE 12, as they are simply an example of them.

SSCA19

In paragraphs 2 and 3, we suggest that the phrase “free of charge” be replaced by “free of charge at point of use”. This is to clarify that although the customer does not pay at point of use, the costs incurred in the service still can be charged through as part of the costs of the business through transportation charges. Also in paragraphs 2, 3 and 4 the licensee’s obligations should be “the licensee shall” rather than “the licensee must”.

We have previously expressed our concern regarding passwords and what it is intended with them. It would be extremely burdensome and unlikely to be practicable to have a single password which would be recorded in respect of each consumer who requested it. This is also unlikely, we would suggest, to be practicable for the consumer concerned either. Passwords are likely to be used on an ad hoc basis, so that they will be arranged when the licensee makes arrangements with the customer to arrange a visit. In paragraph 3 therefore, after the phrase “asks it do so” we suggest the addition of “where the licensee visits that consumer’s premises”.

SSCA20

Please see our comments in SSCA19 regarding the phrase “the licensee must”.

Paragraph 1(f) should be amended back the existing licence condition, which is not a general undue disturbance provision, but disturbance to the customer by authorised officers by different licence holders exercising powers of entry for like purposes.

We request the Authority to reconsider the drafting of paragraph 2(c) to delete the new wording “each of”.

The current licence drafting, which we are not aware of being suggested as having been inadequate for its purpose over many years, requires the licensee to ensure that its domestic customers as a whole are aware of its relevant publications or statements. We use such methods as our website, local libraries for hard copy statements and so forth. The inclusion of the words “each of its domestic customers” now appears to mean that we need to show that we have used reasonable endeavours not merely to make our publications or statements available in that fashion, but to each and every individual domestic customer. We consider that to be wholly disproportionate and a significant cost and administrative burden.

SSCA21

Please see our comments in SSCA19 about the phrase “the licensee must”.

Paragraph 1, we are not clear what the words “the conveyance of gas or” add to the phrase “the manner in which it [the licensee] conducts its gas Transportation Business”. (transportation business?)

In respect of paragraph 2 and the words “each of”, please see our comments to SSCA20.

SSCA22

In paragraph 1 we suggest that the obligation is qualified by the words “unless the Authority or the Consumer Council otherwise require” to allow the Authority and the Consumer Council flexibility in their requirements from time to time.

It is unclear what purpose the reporting in paragraph 2(a) achieves and it would involve a significant and disproportionate cost to the benefit of keeping the data in an auditable form. It also suggests that passwords are intended to be permanent matters rather than ad hoc arrangements when visiting a customer's premises, as we have previously discussed.

SSCD9

We note that certain aspects of this condition still need resolution. In particular, we would request clarification of the intention regarding environment reporting which we had understood was likely to be reported under CRP or RRP rather than under this condition.

We do not support the inclusion of the reference to pipeline records as we do not see what benefit this provides to Ofgem or consumers

We do not support the removal of paragraph 12 of the current condition, which we consider provides a proportionate protection to the licensee in respect of significant changes.

SSCD10

We have previously raised with Ofgem our concerns in paragraph 1(a) that the wording now refers to "including" rather "in respect of". Ofgem has not consulted on this change, which while appearing minor, means that paragraph 1(a) relates to all types of connections, not merely the four areas specified, other than those specifically excluded under paragraph 8. It therefore includes an audit in respect of those activities, again not merely the four specified items. The return to the words "in respect of" is therefore requested.

We note the retention of paragraph 2(g), which we consider not to be in the interests of or consistent with better regulation principles. It has long been a principle of Ofgem and the Authority that matters of Health and Safety are left to the Health & Safety Executive. Their powers under the Gas Safety (Management) Regulations and the Health and Safety at Work Act etc 1974 in particular, enable them to take action, not merely in respect of individual infringements, but also on failures of the conduct of the business leading to such matters. We consider it contrary to better regulation to have such duplication of enforcement, particularly where there is clear enforcement process, which is regularly used, by a highly specialised, professional and experienced regulator already in place. In addition, as has been drawn to Ofgem's attention, the creation of this Standard allows no saving for extraordinary events outside the licensee's control, particularly towards the end of a formula year, which of course is in the winter months. This might cause the licensee to be in breach of licence for matters outside of its control, which, again, we do not consider to be in accordance with Better Regulation principles. We do not consider it sufficient to say that the Authority would take such matters into account when deciding to take enforcement action or not. We consider that a licensee should only be, in principle, capable of being in breach of licence through matters which are within its control.

It appears that Ofgem believes that it may exercise its discretion to enforce the condition where the Health & Safety Executive may themselves be taking action under their powers. We do not believe this to be the case. Section 28 of the Gas Act says that where the Authority is satisfied that a licence holder is contravening or likely to contravene any relevant condition, it *shall* by Final Order make such provision as is requisite for the purpose of securing compliance with that condition or requirement. There is no equivalent, in relation to common enforcement, between the Authority and the Health & Safety Executive as there is with the statutory provisions between the Authority and the Office of Fair Trading in relation

to competition matters or in the order of enforcement between the Competition Act 1998 and the Gas Act 1986.

In paragraph 7(a) the reference for the purposes of undertaking audits should be to paragraph 1(a) not paragraph 1. If this change is not made the audit requirement would not relate merely to connections, but to telephone services and emergency as well and Ofgem has not suggested at any stage that there is any need for such an audit in relation to those activities.

SSC4B

We suggest that paragraph 10 (non-discrimination) can be deleted as this provision is already included in Section 9(2)(a) of the Gas Act.

CHAPTER 4

Question 1: Is the timetable set out in this chapter appropriate?

We are content with the proposed timescale and look forward to further working group meetings with Ofgem and GDNs, particularly on performance reporting and quality of service workshops.

APPENDIX 10 – Proposed Changes to the Gas (Standards of Performance) Regulations 2005

We recognise the work that Ofgem has done on the draft regulations following meetings with ourselves and others. We consider however that there are points which still need to be considered to make the regulations workable.

Regulation 3(1) Definition of Relevant Gas Transporter

We suggest that in relation to sub-paragraph (b) of the definition the regulation needs to specify the time in which the affected transporter notifies the upstream transporter. This is because, until it does so, it and not the upstream transporter will be responsible under the regulations for the payments to its own customers. The regulations, in the interests of clarity for consumers who should be able to know quickly from whom to seek compensation, should seek to minimise the time where such doubt may exist. This will also ensure that the affected transporter acts promptly to notify the upstream transporter, otherwise it will be responsible for the payments to its customers. That would appear to be in the customer's best interests.

We remain of the view that the regulations need to deal with the fact that it is only the downstream transporter who can minimise the degree of any interruption to its customers, but we will comment further on that later in this response.

Regulation 7(3)(d)

We remain doubtful that the revised drafting, following our comments at the working group meeting, still actually achieves what Ofgem wishes it to achieve. What the regulation seeks to achieve is that once the cap is reached the customer is not entitled to further payments. The risk in the drafting is that the fact of reaching the cap, on the construction of the drafting, means that no payment is payable at all. That is clearly not what is intended and the drafting must ensure that that is not the effect. Our view is that it is important to ensure that the fact of reaching the cap is not regarded as “a circumstance”; that is because under the terms of the regulations generally, if a circumstance occurs then an exemption applies. We would suggest that it may be more helpful if Regulation 7(3)(d) starts “to the extent that making of an initial payment....”.

We suggest that additional wording is required in Regulation 7(3)(e) to make it consistent with the definition of relevant transporter. In our view, Regulation 7(3)(e) needs to provide, not merely that the discontinuance was caused by failure of or damage to the pipeline system of the upstream transporter, but also that the downstream transporter has notified the other transporter. Otherwise, as drafted, the downstream transporter has an exemption as in fact the failure was due to an upstream transporter, but the upstream transporter has not become a relevant gas transporter because the downstream transporter has not notified it.

As in the definition of relevant transporter we would suggest that there should be express in this regulation the timescale in which that notification should have taken place. It is almost certainly the case that there may therefore need to be two sets of notification; an initial notification; to alert the upstream transporter that a downstream transporter is affected so that the upstream transporter becomes the relevant transporter and a second notification giving the number of customers affected and the duration of the interruption. That is because, obviously, this latter information is not going to be available for some time. The

preliminary notification however at least will establish quickly between the parties who is principally liable for the payment of compensation.

We remain concerned that there is no exemption or carve-out for the circumstance where the downstream transporter has not been effective or efficient in minimising the interruption. There is no incentive on the downstream transporter to carry out works at any particular speed. The upstream transporter has no control over this whatsoever but will be liable to make the payments. It may be that the upstream transporter in fact under contract provides emergency services to the downstream transporter, but there is no necessary implication for that going forward in the future and the regulation should be understood and implementable without relying on a particular assumed contractual background.

We note that Regulation 12(7) seems to try and deal with this issue. However, that regulation is merely a saving provision, in that it simply says nothing prevents a transporter seeking reimbursement. It does not, and indeed cannot, give a right of action for the transporter. The right of action has to be found elsewhere.

We would suggest that there is no principle in English Law which would allow this.

The upstream transporter is, in this scenario, liable to pay the compensation payments, which are pure economic payments. These “arise” through the length of time that the downstream transporter takes to remedy the interruption. For the upstream transporter to recover payments, it must first show that the downstream transporter has some duty to it in respect of minimising the length of the interruption, secondly that there has been a breach of that duty and, importantly, thirdly that there has been physical loss or damage to property of the upstream transporter. Even assuming that the downstream transporter owes a duty, for which we would suggest there is no authority whatsoever, the loss that upstream transporter suffers is pure economic loss which is not recoverable in negligence.

This therefore means that there would have to be some contractual arrangement between the gas transporter and some mechanism for Ofgem to require the transporters to enter such arrangements. It may be that as between licensed gas transporters such arrangements can be put in place but it is not clear how Ofgem proposes to introduce the provisions as between licensed gas transporters and exempt gas transporters.

Regulation 9(3)(e)

As the circumstances behind such incidents create immediate reactions and difficulties for customers who do not have alternative heating and cooking, it is very likely that claims for compensation are going to be made much earlier than three months and we would therefore suggest that a shorter period, say one month, should be provided for in the regulation to avoid having to keep records open for times when they are not required.

Regulation 10

Regarding Regulation 10(6)(d),(e),(f),(g) and (h), we repeat our concerns referred to earlier regarding Regulation 7 that the wording still has the potential that the mere making of a payment which will exceed the cap is itself a circumstance and therefore a total exemption. Again, we suggest, that prefacing each paragraph with the words “to the extent that” may solve the problem.

Regulation 10A

While the insertion of a (rolling) 7 day period is an improvement on previous drafting this regulation still remains likely to cause necessary complications and inefficiency in scheduling work. The inclusion of this regulation as a guaranteed standard is likely to detract from the generally good working relationship with customers on planned interruption.

We are also concerned that the provisions of paragraph (3) provide no exemption whatever once the work has started. This cannot be correct. There are bound to be circumstances which a transporter, acting efficiently, cannot deal with. The regulation should be focussed on the continued need to inform the customers affected, not on creating a strict liability regime. That achieves no incentivisation purpose whatever.

Regulation 10B

We note the changes suggested which appear helpful to resolve some of the difficult issues with this regulation.

In paragraph (1) we suggest that after the word “customer” is inserted “or potential customer” to accord with the wording in the authorising section of the Gas Act.

We also suggest that in relation to verbal complaints, the words in brackets following are revised as follows “(by use of a telephone number which the relevant gas transporter has advised the customer *for that purpose*)”. The reason for the wording in italics is to ensure clarity. We have a published customer complaints number which can monitor incoming calls. Where there are particular incidents we may also set up a special number, which likewise, can be used for monitoring enquiries and complaints. What the wording will prevent is customers who happen to have got hold a particular number, whether an employee’s mobile or other number using that number to make a complaint. While there is per se no objection to that being the case from the point of view of dealing with a complaint it avoids, for the purpose of making payment, unprovable allegations that a telephone call was made but not responded to. Our suggestion is therefore not one to avoid dealing with the complaint but to ensure certainty so far as is possible and to minimise the amount that the Authority is called upon to make determinations on matters which, since they are verbal, are in essence unprovable.

Ofgem has requested views on whether there should be a definition of “substantive reply”. While in one way this might be helpful, we consider that on balance it is probably too difficult to define exactly what is meant by the phrase. It may be more helpful if Ofgem, following consultation with interested parties, indicated by way of guidance notes how it would approach a determination on the issue.

In our view substantive complaint does not necessarily mean that the transporter answers point by point or in the detail requested by the consumer the matter in question. That would simply be to invite customers to engage in fishing expeditions. Substantive, in our view, means that the transporter states its position on the complaint in question. Thus, for instance, substantive reply could include the transporter saying that it has investigated the matter in question, has discussed the issue with the individuals concerned, but did not agree with the version of events presented by the customer and had nothing more to add.

Paragraph (4)(b) needs to be amended since it only refers to the transporter not being able to contact third parties. It needs to cover the transporter not being able to identify who the third parties are and, more importantly, not having had a reply back from that third party. It is one thing to write to a third party requesting assistance for information, it is another, not within the control of the transporter, to get a reply back.

Paragraph 10B(4) should also exclude complaints which are frivolous, fictitious or simply repetitive. This is not covered by Regulation 13(7) which only details with information provided by the customer, not a complaint made by the customer.

We remain concerned generally that the introduction of this regulation will significantly increase the burden and bureaucracy of dealing with complaints, and arguments as to whether a complaint has been dealt with, because of the link to a monetary payment which does not currently exist. We also foresee claims made on purely technical bases under Regulation 10B(2)(a), for instance because a letter merely misses out the name or address of an employee.

Regulation 12(B)

We wonder whether Regulation 12(2)(b) in fact should say “where a gas transporter receives a payment from a relevant gas transporter for onward transmission to a customer”.

In regulation 12(3A) the relevant gas transporter can only make the required payment either to the customer, the shipper’s supplier or the other gas transporter if the other transporter has informed him of the number of customers and the length of period or interruption. The payment therefore cannot be done within the prescribed period from the applicable date but only from the date on which the relevant gas transporter receives the relevant information from the other gas transporter.

We do not consider that Regulation 12(4) as drafted can work strictly speaking according to the definitions. That is because of the interaction of Regulation 12(2) and Regulation 12(4). The reason for this is that 12(4) refers to different scenarios. Under 12(2)(a) the transporter making the payment to the customer is the relevant gas transporter and therefore in respect of that payment Regulation 12(4) rightly, as now, refers to the relevant gas transporter. However where Regulation 12(2)(b) applies the transporter receiving payment from the other transporter is by definition not the relevant gas transporter and therefore insofar as Regulation 12(4) requires it to pass on the payment which it has received to its customer, 12(4) needs to refer to gas transporter, not relevant gas transporter. It seems to us that the only way to deal with this is to have separate variants of regulation 12(4) to deal with the situations in Regulation 12(2)(a) and Regulation 12(2)(b).

We also consider that the combination of 12(2)(a) and 12(4) does not work where an interruption lasts more than 20 working days. 12(2)(a) applies where “a payment” is due. “A payment” prima facie means an individual payment. It would be more sensible for payment to be defined to include, as in a supply interruption case, the aggregate of payment due for the period in question. Neither the transporter nor the customer will want day by day payments being made. In relation to its impact on 12(4), if the interruption lasts for more than 20 working days (and the cap implies a maximum interruption of 50 days), then, as presently drafted, the transporter will automatically be liable for the “late “ payment because the 20 working days run from the date of each individual sum due. In the case of aggregated



payments the 20 working days should run from the date when the aggregated payment amount is known.

Regulation 12(6)(c) should refer to credit invoices to suppliers or shippers which is in fact how such payments are made presently and also needs to make reference to payments to the transporter for inter-transporter payments.

Schedule 2 – Determination of Disputes

We have through the working groups previously notified to Ofgem the need to understand and ensure consistency, and avoid duplication, with the Consumer Redress Bill.