

Gas Distribution Price Control Review Second Licence Consultation Document

A Response by National Grid Gas Distribution

16 January 2008

Section 1: Summary

1. This is the response of National Grid Gas's (NGG's) gas Distribution business to the Gas Distribution Price Control Review Second Licence Drafting Consultation. We understand that NGG's gas Transmission business will be submitting a separate response in relation to the proposed changes that impact on NGG's gas transporter licence in respect of the National Transmission System (NTS).
2. We note that Ofgem has asked Independent Gas Transporters (IGTs) and NTS licensees to indicate whether they are minded to consent to the drafting published and suggests that the GDN Operators were asked to do so as part of considering Final Proposals. However, the Distribution Network Operators were only asked to indicate their acceptance of Final Proposals in Ofgem's Final Proposals document, rather than their acceptance of the drafting. We consider that, in places, the drafting as published by Ofgem falls some way short of the standard of consistency, clarity and quality which will be required. We also note that Ofgem's consultation specifically reserves its position on some licence conditions. In this light, we are only in a position to provide an indication that we would be prepared to consent (or not object, as appropriate) to the published drafting if the issues raised in this response and the attached marked-up versions of the drafting incorporating our comments are addressed by Ofgem in a manner which is satisfactory to us and on the basis that a satisfactory outcome is reached in relation to the matters on which Ofgem has reserved its position. That said, this does not mean that we are in any way resiling from our earlier acceptance in principle of the policy embodied in the Final Proposals document on which we responded to you on 17 December.
3. The response is sub-divided by reference to each section of the licence in the order in which Ofgem has described the amendments in the consultation document. In addition, we have appended detailed drafting comments on each of the licence conditions that Ofgem has published as part of this consultation.

4. In relation to the detailed drafting, we note that Ofgem indicated in Appendix 6 to the licence drafting consultation that it considered that the use of an obligation "to take reasonable steps" is "considered to be the modern approach" and that it was used in the Electricity Distribution licence. We do not consider that this statement is a satisfactory response to our earlier comment that the use of this form of words is inconsistent with the use of "reasonable endeavours" obligations in the rest of the licence and therefore capable of causing confusion because:
- (i). it is not clear whether the intensity of the obligation created by an obligation to "take reasonable steps" is the same as that created by an obligation to "use reasonable endeavours" thereby leading to potential inconsistency in the levels of obligation between different licence conditions;
 - (ii). the term "take reasonable steps" does not have the clarity that "use reasonable endeavours" has, since the latter form is supported by a significant amount of judicial interpretation in case law; and
 - (iii). the use of obligations to "take reasonable steps" leads to general drafting inconsistency within the licences taken as a whole.
5. As a result, we consider that the form "take reasonable steps" should not be used and that any decision whether to use this form of words in the Gas Transporter (GT) licences should be postponed until any thorough review of the terms of the GT licences in the manner taken to revisit the terms of the Electricity Distribution licence has been undertaken.

Section 2: National Grid's detailed response to specific questions raised.

Chapter Two: Proposed Modifications to Special Conditions in Part E

Question 1: Is it appropriate to include a provision in SCE7 which enables the Authority to determine on TMA costs that are not already covered by the provisions of the re-opener?

6. Within the consultation document Ofgem ask whether it is appropriate to include a provision in SCE7 that enables the Authority to determine on Traffic Management Act (TMA) costs that are not already covered by the provisions of the re-opener. The TMA provides a range of new powers

to Highway Authorities to enforce additional requirements on utilities as well as the imposition of new charges. For example; the act allows Highway Authorities to:

- direct utilities as to when the work should be undertaken in traffic sensitive areas;
- record and maintain details of other utilities infrastructure where the infrastructure is not shown on the existing maps;
- direct utilities to resurface highways or make a contribution to the resurfacing of highways where they deem that engineering works have damaged the integrity of the road surface; and
- levy inspection fees.

7. Due to the timing of the enforcement of such powers, many of which do not become effective until April 2008 and beyond, it is not yet clear how the Highway Authorities will choose to utilise them. In such circumstances it is clear that Ofgem should not unnecessarily restrict the costs that Gas Distribution Networks (GDNs) are able to recover via an Income Adjusting Event (IAE). Ofgem has already included appropriate conditions that ensure that the GDNs must demonstrate that they have incurred the costs efficiently prior to Ofgem allowing an IAE. As a result, the inclusion of a provision in SCE7 which enables the Authority to determine on TMA costs that are not already covered by the provisions of the re-opener does not serve to diminish Ofgem's powers or lessen the obligations on the GDN. It does, however, provide appropriate flexibility in an area of uncertainty which may result in material additional costs being born by the GDNs. Consequently Ofgem should include the additional provision.

Question 2: Are our proposed changes to SC Part E Appropriate

8. We note that Ofgem has decided that defined terms in Part E will be capitalised. While this approach may be technically correct and is in accordance with Ofgem's current drafting policy (as evidenced in its drafting of the terms of Electricity Distribution Licences currently out for consultation), Ofgem does not appear to have applied this policy consistently across Part E. For example, certain terms which should be capitalised throughout have sometimes been written in lower case, and some of the definitions inserted in particular conditions have been created without capitalisation - see for example Special Condition E5. As a result, we suggest that Ofgem needs to review the use of all defined terms in Part E to ensure consistency of the use of capitalisation.

9. Clearly we are unable to provide comments on the areas where Ofgem has yet to provide complete drafting. We expect Ofgem to distribute such drafting prior to the working groups so that the GDNs are able to appropriately review and comment on the proposed conditions.

SCE1 – Revenue restrictions definitions in respect of the Distribution Network

10. There are a number of minor drafting issues that we have included within the marked up version that serve to clarify the definitions.

E2 – Restriction of revenue in respect of the Distribution Network Transportation Activity

11. We believe that this licence condition could be enhanced by including the words “for each relevant Distribution Network” to ensure that the restrictions relate to each specific network.
12. Sh_t is defined as an allowance within SC E8, rather than shrinkage incentive revenue, as it is in SCE2. The definitions should be consistent.

E3 – Distribution Network Allowed pass through items (F_t)

13. We do not recognise the proportional splits by network in Annex B part 1 – RDN factor (RDNF). They are not consistent with the equivalent term within the transmission licence (NDRP_t) which is 32.6391%. We believe that they should be as follows:

GDN	2007/8
East of England	28.3146%
London	13.6385%
North West	14.2424%
West Midlands	11.1655%
Total	67.3610%

SCE4 – Distribution Network Transportation Activity Revenue Adjustment (K_t)

14. We believe that the drafting of E4 could be enhanced by the addition of further detail within the definition of the terms. The complexity has arisen because of the simplification of the terms within the licence drafting process and the reorganisation of E2B. We suggest the following definitions are used.

I_t	Means the percentage interest rate in respect of Formula Year t which is equal to the average Specified rate calculated over the Formula Year t:
R_{t-1}	Means the Distribution Network Transportation Activity Revenue in respect of Formula year t-1, except where $t=1$, where it shall be the Distribution Network transportation activity revenue (DNR_t) in respect of Formula Year 2007/08 as defined by paragraph 7 of part 1b of Special Condition E2B: Restriction of revenue in respect of the Distribution Network Transportation Activity in the licence in force on 31 March 2008
MR_{t-1}	Means the Maximum Distribution Network Transportation Activity Revenue in the Formula Year t-1, as defined in paragraph 5 of Special Condition E2 (Restriction of revenue in respect of the Distribution Network Transportation Activity), except where $t=1$, where it shall be the maximum Distribution Network Transportation Activity revenue ($DNMR_t$) for Formula Year 2007/08 as defined by paragraph 8 (1) of part 1b of Special Condition E2B in respect of the relevant Distribution network: Restriction of revenue in respect of the distribution Network Transportation Activity in the licence in force on 31 March 2008.

SCE5 – Mains and Services Replacement Expenditure adjustment ($MSRA_t$)

15. We have noted a small typographical error within the drafting. The smallest diameter should be defined as ≤ 3 " rather than $2 - 3$ " to make it consistent with the FPs. We also believe that a definition for "Purge and Relight costs" should be included now that the service costs have been included with the replacement incentive mechanism.

Purge and relight costs	Means the costs for purging the service and other associated equipment of air and relighting the customer's appliances.
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16. We have included a number of amendments within the licence drafting to ensure that it is clear that the tables are GDN specific.

SCE6 – Distribution Network Exit Capacity costs and incentive revenue (Ex_t)

17. Ofgem has previously written to us confirming that they accept the rationale for calculating the performance against the target for the exit capacity incentive being based on capacity booking levels between October and March, rather than the full year, and that this interpretation should be

used to determine incentive performance within the current Licence. However, Ofgem has not altered the drafting for the new Licence to be consistent with this. We continue to believe that it is appropriate to alter the drafting to better align the powers of the incentive and the interests of the consumers, rather than using potentially inappropriate capacity booking levels within the assessment.

18. In addition, Ofgem has indicated that whilst they accept the rationale for calculating the performance against the target for the exit capacity incentive being based on prices applicable between October and March, rather than the full year, they do not intend to alter the drafting. We continue to believe that it is appropriate to alter the drafting to better align the powers of the incentive and the interests of the consumers, rather than using historic charges within the assessment.
19. We support Ofgem's decision to use the prevailing capacity charges at the time when the GDNs are making capacity bookings for the determination of EIT_t . However, we do not believe that the drafting that Ofgem has proposed adequately captures its intention. We believe that drafting provided below would be more appropriate:

NTSICH_E (v,t,d) means the relevant indicative NTS (TO) Exit capacity charge in p/peak day kWh/d for Distribution network exit zone v within the relevant Distribution Network for each day d between 1 October and 31 March for formula year t as specified in the latest NTS gas transportation statement as at 1 May in formula year t-3 or, if no such indicative charge is available in such statement, then the relevant indicative NTS (TO) Exit capacity charge in the same statement for the closest preceding formula year to formula year t for which indicative NTS (TO) Exit capacity charges are provided in such statement.

20. We acknowledge Ofgem's intention to include a licence obligation to monitor GDN's flex capacity bookings. We believe that it would be appropriate for this to be included within Section E - Special Conditions section of the licence. We would be grateful if Ofgem could circulate their proposed drafting such that the GDNs have the opportunity to provide comments prior to the statutory consultation process.

21. We have noted a small number of errors within the values for $NTSBAExFF_{v,t}$ included within annex J for the West Midlands network. The values for $t=1$ should be 6.06 and -4.13 for WM2 and WM3 respectively.

SCE7 – Determination of any adjustment factor to be applied to MR_t (IAE_t)

Raising of an IAE

22. We believe that there is an inconsistency in the drafting which sets out the way in which each of the IAEs will be put into effect. The drafting within paragraph 22 suggests that an IAE requires the determination of a value within a condition rather than a change to the condition itself, whereas the drafting of paragraphs 8 and 13 state that, in relation to a TMA and a tax liability income adjusting event, the licensee should propose a relevant adjustment to the revenue restriction where it is of the view that such an IAE has arisen.
23. This is an important distinction because a change to the condition itself would, in the absence of an alternative modification mechanism (currently not provided for within the drafting), require a statutory consultation under Section 23 of the Gas Act, whereas the determination of a relevant value within a condition (as per existing IAE provisions) would not. We believe that it is appropriate for Ofgem to ensure that the drafting allows for a change / determination of value rather than for a change to the revenue restriction condition itself. Consequently we have suggested amendments to paragraph 8 and 13 to reflect this change.
24. There is also a minor error in paragraph 22. The reference to an “income adjustment (IE_t)” should be “income adjustment (IAE_t)” so as to capture all three categories of IAE, not just the Exit IAE as currently drafted.

Traffic Management Act

25. In line with our response to the specific question raised by Ofgem within the consultation document, we believe that Ofgem should retain a provision to allow it to determine on “Other TMA Costs”.
26. Further to this we believe that the definition of $ITMA_t$ should be amended to ensure that it captures all of the provisions that may arise as a result of the enactment of the TMA, including amended provisions within the New Roads and Streetswork Act 1991 (NRSWA). We suggest the following drafting.

ITMA_t means a TMA income adjusting event resulting from an increase in the costs associated with any order or regulation made pursuant to Part 3, or any section of the New Roads and Streetworks Act 1991 amended by Part, 4 of the Traffic Management Act 2004 or any equivalent provision in the Transport (Scotland) Act 2005 and shall be derived in accordance with paragraph 8: and

Tax Liability Income Adjusting Event

27. In correspondence with Ofgem, when we raised the need for the tax liability income adjusting event to be drafted in such a way to allow GDNs to raise prospective notices. Ofgem indicated that they believe that such a prospective provision should be allowed¹. We recognise that this clarification was provided with insufficient time to allow it to be fully reflected within the licence drafting. However, we believe that it is important that the drafting is amended to reflect Ofgem's intentions. This will require changes to:

Para 12	Change to allow the point of liability crystallisation to be prospective.
Para 13	Change to "Threshold level" drafting to allow for prospective costs in excess of 1% of base revenues rather than require that the costs have been incurred.

E8 – Distribution Network Shrinkage Allowance (Sh_t)

28. We do not believe that the definitions proposed within the drafting for the shrinkage arrangements taking effect from 1 October 2008 fully capture the intention of the policy. We have included amendments to the licence within the marked up version attached to this response.

$\sum_{all d}$ Means the sum across all Days d within Formula Year t, except where t=1 when it means the sum across all days commencing from 1 October 2008 within the Formula Year;

¹ Letter from David Gray to Paul Whittaker - GDPCR Final Proposals - points of clarification 13 December 2007.

- Wdy means the Forward Offer Price of gas at close of business on the day before the relevant day d published in an Approved Market Price Report for delivery at the national balancing point;
- Wed_d means the Forward Offer Price of gas at close of business on the day before the relevant weekend or Bank Holiday published in an Approved Market Price Report for delivery at the national balancing point; and
- WD means for the period commencing 1 October 2008 the number of days within the relevant year t except when t=1 when WD_t = 182

29. The GDNs have recently held the first meeting with xoserve and Transmission to discuss the changes required to UNC and the Gemini systems to implement the new Shrinkage arrangements developed as part of PCR Final Proposals. We are concerned that the six-month roll over of the use of shrinkage factors for 2008/09 may not provide sufficient time to get the Gemini system changes completed. The relevant change order is being progressed, but xoserve has indicated that it is unlikely that the required change can be made in time for the software release in August.
30. Clearly we will still work hard with the other parties to try and implement changes in time for October. However we believe that in order to avoid windfall gains / losses it is appropriate to include a provision that would allow Ofgem to extend the six-month rollover period, if the Gemini and UNC changes cannot be made quickly enough.
31. Within Annex O the total shrinkage volumes are unnecessary and, in any case, incorrect for National Grid's networks.

SCE9 – Distribution Network Environmental Emissions incentive revenue (EE_t)

32. We have proposed a minor amendment to paragraph 6, which is included within the marked up version of the draft licence.

SCE10 – Distribution Network Discretionary reward scheme revenue (DRS_t)

33. The paragraphs should be numbered rather than lettered.

34. Paragraph “a” should be amended to include “maximum” in the description of maximum allowed revenue.

SCE11 – Distribution Network Innovation funding incentive for sustainable development scheme (IFISD_t)

35. Paragraph 1 should be amended to include “maximum” in the description of maximum allowed revenue.

SCE12 – Distribution Network loss of meter work revenue driver (LM_t)

36. Paragraph 1 of E12 does not fully set out the reasons for the inclusion of the special condition. We believe a more appropriate definition would be.

The purpose of this condition is to provide for the calculation of adjustments to the Maximum Distribution Network Transportation Activity Revenue in respect of each relevant Distribution Network to reflect the loss of meter work revenue and the subsequent stranding of emergency service provision costs.

37. We believe that rather than amend the definitions for MV_t and TPV it would be more appropriate to use the defined term “infill metering job” and its definition within paragraph 3. We suggest that the following definitions are used.

For the purposes of this condition, a “Infill Metering Job” is a Metering Job carried out at any premises to which gas is conveyed by the licensee, which is performed by a person employed or engaged by the licensee or by a third party in order to enable the licensee to meet its obligations under Standard Special Condition A8 (Emergency Services and Enquiry Service Obligations).

MV_t means the number of Supplementary Metering Jobs in respect of the Distribution Network in Formula Year t;

TPV means the number of Supplementary Metering Jobs at the tipping point and is set out in Annex M;

SCE16 – Disapplication of the Distribution Network Transportation Activity Revenue

38. We have suggested a number of minor changes to the drafting to make use of the defined term “Relevant Special Condition”. We have also proposed an amendment to paragraph 9 to clarify the intent of the condition.

SCE17 – Allocation of revenues and costs for calculations under the price control in respect of the Distribution Network

39. A small number of minor typographical changes have been proposed, including capitalisation and use of defined terms.

SCE18 – Excluded Services

40. Corrections of minor errors in the drafting have been proposed.

SCE19 – Restriction of prices in respect of Tariff Capped Metering

41. Ofgem has stated that there are no substantive changes to this condition, but we note that a number of significant amendments have been made which have not been signalled in the consultation document and as drafted are unacceptable.
42. It appears that the basis for the RPI_t term has been changed from the existing June to November reference period expressed in paragraph 2 of the existing condition SC E5 to the new period set out in SC E2 paragraph 5, which is July to December, together with consequent changes to the base year. While mathematically the impact of the RPI calculation is unlikely to be material, the timing is crucial to allow the annual tariff cap charge calculation to be completed and three months notice of revised charges issued to suppliers such that new charges can take effect from 1 April each year. Use of the SC E2 definition is therefore impractical with regard to metering tariff caps. A further flaw is that the proposed drafting does not identify a base year. If Ofgem wishes to update the drafting simply to capture a more contemporary date then we suggest that April 2008 could be used as a base.
43. We cannot trace the calculation that Ofgem has made to determine the tariff caps proposed in this new drafting. We had not expected to see any change to these figures and as they are materially different from the current tariff caps, we believe that notwithstanding our comment regarding the RPI calculation above, some other significant error has been made. A trace of the

tariff caps calculated in accordance with the existing licence can be found in the notifications provided to Ofgem in December of each year. The notification of tariff caps effective from 1 April 2008 was issued to Ofgem on 21 December 2007, after the licence consultation was issued, but before we identified the drafting changes to this condition.

44. We are disappointed that Ofgem has now suggested amendments to this condition having specifically denied National Grid's request that the metering obligations and tariff caps should be reviewed as part of this price control. There has been no consultation and Ofgem has not signalled that changes would be made. If Ofgem is now prepared to review the metering obligations then we would welcome an early start to that consultation. Until such a review is undertaken we recommend that Ofgem reverts to the current drafting of SC E5, although if an update to the base figures is desired, then the condition should refer to the prevailing tariff caps for the base year of 2008/09.
45. For reference the charges notified to Ofgem and suppliers on the 21 December are illustrated in the table below together with those proposed by Ofgem:

Tariff Capped Charges	Actual 2008/9 charges effective 1 April 2008	Draft Special Condition E19
Domestic Credit Meter Rental	£14.10	£13.26
PPM Meter Rental	£32.92	£29.45
Domestic Meter Exchange	£57.72	£49.63
DM Daily Meter Reading	£426.58	£366.45

Chapter Three: Other proposed modifications

Question 1: Are our proposals to consolidate obligations in relation to codes of practice and vulnerable customers appropriate? In particular, do our proposed changes maintain adequate protection for vulnerable customers? Please give reasons for your answers.

46. We believe the proposals to consolidate obligations in relation to codes of practice and vulnerable customers are appropriate. The licence obligations are much clearer and align with current GDN practice in providing services to vulnerable customers. We currently provide password services for customers who are of pensionable age, disabled or chronically sick and contact facilities for customers who are blind, partially sighted, deaf or hearing-impaired. The proposed licence

conditions will ensure that vulnerable customers continue to receive an appropriate level of service from all GDNs.

Question 2: Is it appropriate to move some or all of the conditions in SSC A19 – 22 to the Standard Special Conditions in Part D? If so why?

47. Throughout the licence consultation process we have advocated that Standard Special Conditions A19–22 be transferred from Part A of the licence to Part D. The conditions apply largely to domestic consumers and relate to activities normally carried out by GDNs. While it is possible that the National Transmission System (NTS) may have some interaction with gas consumers from time to time, these occurrences would be infrequent and certainly not a normal business activity. Moving the conditions to Part D of the GDN licence is more consistent with the better regulation principles and should not impact the level of protection currently afforded to customers by the revised provisions proposed by Ofgem.

Question 3: Are our proposed changes outlined in this chapter and set out in detail in the appendices appropriate?

48. In addressing this question we will examine in turn each of the proposed licence conditions outlined in Ofgem's consultation. Our comments should be read in conjunction with the detailed drafting comments included in the appendices on the face of the proposed licence conditions. For brevity, we have not reiterated each of the remarks made in response to Ofgem's earlier licence consultation, but this should not be regarded as agreement with or acceptance of Ofgem's views.

SSCD9 – Distribution Network transportation activity incentive scheme and performance reporting

49. Ofgem considers that its proposed amendment to paragraph 12 provides sufficient protection to GDNs for changes to RIGs. The requirement for Ofgem to consult licensees on proposed changes and give due consideration to responses does nothing of the sort. Ofgem's justification for the change is that the current provisions requiring a private collective licence modification procedure would only be required where licensees' allowed revenue was affected.
50. We do not accept Ofgem's assertion, as changes to RIGs could impose significant costs on GDNs and this has equivalence with alterations to allowed revenue. If, as stated, Ofgem accept

that changes to allowed revenue require licence modification protection, then exposure to the imposition of costs by Ofgem not contemplated by the price control settlement should be afforded the same level of protection. Clearly, Ofgem believed this was proportionate when paragraph 12 was originally contemplated and it has provided no objective rationale for change.

51. An alternative approach, which could rationalise the existing process, yet retain adequate protection for GDNs would be to utilise paragraph 14 of condition B16 (Price Control revenue reporting and associated information) of the electricity transmission licence. For proposals to modify RIGs such that a new category of specified information would be required or greater levels of accuracy, then the Authority could only make a modification with the consent of each licensee, but that consent could not be unreasonably withheld or delayed. We believe this approach is pragmatic and consistent with current requirements in both transmission and Ofgem's proposed Special Condition E9 (Distribution Network environmental emissions incentive revenue) for the modification of the leakage model RIGs.

SSCD10 – Quality of Service Standards

52. We have a number of detailed comments in relation to paragraph 11 of this condition which are described in the licence mark up.
53. Our concerns in relation to the emergency standards being incorporated in a licence condition without the protection afforded by Section 33BA(3) of the Gas Act remain and we do not understand how Ofgem believes that this will “enable the Authority to take more appropriate enforcement action against the licensee”.²
54. Notwithstanding our views expressed above, although Ofgem has explained its rationale for incorporating the emergency standards within SSC D10, we believe that utilising an existing connections licence condition for emergency standards is unnecessarily confusing. This effect is magnified as the original licence condition not only deals with standards of performance, but accuracy of quotations, audits and specified information unique to connections. It would be much clearer and easier to read by including emergency standards in a separate condition within Part D of the licence. This can be achieved with ease and serves to improve the clarity of the obligations.

² Paragraph 3.24 of GDPCR second licence drafting consultation document reference 290/07

SSCA30 – Regulatory Accounts

55. Ofgem has stated that they consider that the references to the Companies Act in Standard Special Condition are robust. However, we consider that the reference to section 417 of the 2006 Act should be a reference to sections 415 to 417. Furthermore, while the other references to the 1985 Act are to sections that will still be in force on 1 April 2008, the Companies Act 2006 (Commencement No.5, Transitional Provisions and Savings) Order 2007, SI 2007, No. 3495 was made on 17 December 2007 and confirms the dates that the sections of the 1985 Act will be replaced by sections of the 2006 Act as 6 April 2008 (see the table below). As such, it appears Ofgem is missing a clear opportunity to update the references to the 1985 Act to references to the 2006 Act and include a paragraph deeming them to be in force (as was previously done in relation to the changes to the 1985 Act implemented by the 1989 Act - see para 13 of the existing SSCA30). If this opportunity is not taken, the amended conditions will only be up-to-date for 6 days, after which they will need to be construed to refer to the 2006 Act, which appears less than satisfactory under the circumstances.

A30 Reference	Old reference	New reference	New reference start date
Part A Para 2 (b)	226, 226A, 226B	394,396,397	6 April 2008
Part B Para 4 (a)	222 (5) (b)	388 (4) (b)	6 April 2008
Part B Para 7	226	394	6 April 2008
Part C Para 8 (a) (i)	226A	396	
Part C Para 9	226B	397	
Part E Para 17 (c)	234	415	6 April 2008
Part E Para 17 (e)	262	385	[1 October 2007]

SSCA35 – Prohibition of cross-subsidies

56. We note that Ofgem has not amended the construction of this condition and we are concerned that in its current form it fails to clearly set out the duties of the licensee and confuses them with the duties of the government. The nature of Directives is that they create obligations for Member States, that the Member States implement through their national legislative regimes. Paragraph 1 of SSCA35 does precisely this, translating the obligation not to give or receive a cross-subsidy into a form directly binding on the licensees. This condition should not then refer back to the Directive, as the obligations in it are satisfied by paragraph 1 of the condition. As a result the present approach adopted by the drafting is erroneous (the directive not creating obligations for

licensees directly) and confusing (the specific provision of the Directive referred to applying to more than just cross-subsidies).

SSCA38 – Credit rating of the licensee

57. See appended licence mark ups

SSCA40 – Price Control Review Information

58. See appended licence mark ups.

SSCA15 – Agency

59. See appended licence mark ups

Independent Systems

60. We appreciate that the interaction with the Department of Business Enterprise and Regulatory Reform's consultation on independent systems has compressed the time available to develop proposals and the associated licence conditions. As a consequence we believe that considerable further work is required to define how payment mechanisms will operate and in particular defining how the Bulk Price Differential will be calculated and by whom. We have indicated a number of changes in the appended licence mark up.

61. Ofgem has asked for respondents' views on where the Independent Systems licence conditions should be placed. As NGGD does not currently host independent systems, the proposed licence condition is not directly relevant to us. Therefore, it would not be appropriate for us to exercise any influence through subsequent licence modifications. Accordingly, we suggest that the proposed GDN licence condition is incorporated within the Special Conditions applicable to the licensee (DN) Part E of their licence. Following the same logic, the proposed NTS licence condition should be included within Special Conditions applicable to the licensee (NTS): Part C.

SLC 4B – Connection Charging Methodology

62. We have included a number of detailed comments within the appended licence mark up.

63. We previously expressed strong disagreement in relation to the new requirement (paragraph 6) to consult on the connection charging methodology as Ofgem has provided no objective justification for this proposal. As Ofgem now acknowledge³, there is no equivalent provision in the electricity distribution licence, but Ofgem has reasoned that because “there are sections of the gas market that are less competitive than its electricity counter-part” that this is sufficient justification to introduce this change. Furthermore, that because methodologies will change relatively infrequently, that this requirement will not be onerous.
64. We do not know which sections of the gas and electricity connections market Ofgem are referring to, but examining Ofgem’s published Connections Industry Review for 2006/07 (CIR), the evidence might suggest the statement that the market for gas connections is less competitive than electricity is misleading and inaccurate. Direct comparison between the two markets is difficult, because the reporting categories are not equivalent, but headline figures can give a broad indication. Ofgem’s CIR states that, overall market penetration for Independent Connection providers in electricity is 2.6%, whereas the equivalent figure for gas is 25.6%. Overall connections carried out by GDNs represent 44.2% of the gas connections market, compared to 91.2% for Electricity Distribution Networks (EDNs). In the domestic sector, GDNs carried out 95.8% of existing domestic connections and 22.6% of new domestic connections. The nearest equivalent in electricity is low voltage connections for which EDNs carry out 88.8% (95.9% when including affiliates). For existing domestic properties this figure is likely to be much higher as low voltage connections include small non-domestic connections.
65. We are not aware that any particular concerns have been raised by consumers with the existing approach and Ofgem’s own CIR data does not appear to support its justification for the additional regulatory burden. We can therefore see no reasonable argument for such a change.
66. On a separate point, Ofgem expressed a desire within the Final Proposals to have network extensions to fuel poor communities included within the charging methodology by 1 April 2008. Although the detail of how charges are determined and fuel poor communities are defined has yet to be decided, the question of discriminatory charging will arise. If we are required to discriminate In order to meet Ofgem’s objectives in relation to fuel-poor communities, we feel that this should be explicitly recognised within the licence, as to do otherwise could expose gas transporters to challenge from third parties. In any event we would expect Ofgem to confirm that any discrimination arising is due discrimination and has the approval of the Authority.

End

³ Paragraph 3.49 of GDPCR second licence drafting consultation document reference 290/07