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16 January 2008

Dear Ayesha,

GDPCR: Second 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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Wales & West Utilities response to GDPCR: Second Licence Drafting Consultation

CHAPTER 2

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?

ANSWER: We agree with Ofgem that the drafting that they have proposed in relation to Special Condition E7 is appropriate given the inherent uncertainty of the impact of TMA. We consider their proposals provide the appropriate balance between the interest of consumers and appropriate financing of gas networks.

Question 2: Are our proposed changes to SC Part E appropriate?

Please find below our comments on the changes to part E.

ANSWER: We consider that overall the framework and content is largely appropriate but please find below our comments on particular points to Section E. We have not at this stage commented on minor typing, spacing or other such errors.

SCE 1

(a) Use of the subscript "$_t$". We wonder if, generally, reference to "Formula year t" should in fact be to Formula Year $_t$. See, for instance, as an example of this, the use of this in the Definition of "Curtailment Day" in Special Condition E1, given the Definition of "$_t$" later on in the Definition section. If we are correct this should apply wherever that phraseology appears. At present it only seems to be used when applied to elements of the formula (e.g. R_t).

(b) In the definitions of Domestic Meter Installation and Pre-payment Meter, We wonder the phrase "associated apparatus" is better than "associated installations", as the word "installation" has the connotation of the activity of putting the apparatus into place.

(c) We have noted that in general the references to RPI, wherever they appear in Section E, merely talk about "average of the retail price Index numbers published or determined….." see E2(5). There are, of course, several RPI indexes. We wonder whether, for the purpose of Section E, we should not adopt the RPI definition contained in paragraph 3 of Standard Condition 27 to make it clear which index is being used and what the default position is. We think this reflects the position in reality.

(d) Definition of Transportation Business in E1 refers to meter reading activity, whereas there is no such reference in Special Condition E17(3), which merely talks about metering activities.

(e) Definition of Distribution Network Activity Revenue Restriction Conditions; it is essential that the definition includes E16. If it does not it will never be possible to disapply the interim Price Control – so if we declined the main FPs Ofgem

could leave us with the interim price control and there would be no recourse to the Competition Commission.

(f) The definition of Shrinkage misses leakage, which is the main element of shrinkage.

(g) The definitions of Interruptible Exercise Costs and Interruptible Option Costs seem to be the wrong way around.

SCE2
We have no comments on this drafting at present except that the detailed numbers do not add up to the numbers in the Final Proposals. We need to see the detail behind them.

SCE3
We have no comments on this drafting at present, other that than we wonder whether the multiplicand of Z_t in paragraph 6 is correct as it appears to be set at a very high threshold.

In respect of paragraph 3(b)(1) notwithstanding Ofgem's comments the consequences of that paragraph for making the value of RB_t zero is unnecessarily draconian. While we acknowledge that there will be an allowance for rates implied in the Z term there seems no reason, if the RB term is positive in the year before the revaluation, for that figure not to be carried forward, and not revert to zero. If there is a revaluation, the revaluation will be based on the last actual rate figure which would include the RB term. The Clause should perhaps also be amended as it assumes that there will be a rating evaluation commencing 1st April 2010. If that does not in fact takes place the condition should continue to operate in the ordinary fashion. The drafting should therefore cater for the fact that no revaluation takes place or takes place in respect of a different year.

SCE4
We have no comments at this stage.

SCE5
We notice that the cap has been deleted. The Final Proposals however (paragraph 6.18 page 67) appear to indicate a cap would be included. If it is not to be included within this condition how is it to be accounted for. We also consider that in relation to the definition of Zt in 2012/13 there should be provision for a reconciliation of the incentive adjustment to the five year projected costs.

SCE6
We note that from e-mail correspondence that Ofgem agrees that the formula in respect of EIT_t is incorrect and should say "where EIT_t <EDC_t , $EI_t = Max((0.5*(EDC_t - EIT_t)),ECollar_t)$

SCE7
(a) E7 Part C Paragraph 8.
Ofgem has amended in the paragraph below sub-paragraph 8(d) the calculation of the threshold. This does not however seem to be in

accordance with paragraph 2.20 of the Consultation Document which says that the threshold is 1% of the base revenue. However the drafted threshold seems to be greater than that, namely the sum of the 1% base rate **and** what we consider to be the allowance already in the base revenue calculation.

(b) E7 Part C Paragraph 9.
The effect of this drafting seems to us to be that a request for a reopener on TMA is a one-off request given that the costs one is looking to recover are from the date of the proposal to the end of the Formula period. It should also be noted that the effect of paragraph 19 of Part E of the Condition means that one has to keep a constant eye on the additional costs given the obligation to make an application not later than three months from the end of Formula Year in which the threshold is reached. Effectively it is apply or lose it. Is this really intended?

(c) Condition E7 Part E Paragraph 12.
We are not clear from the drafting here whether the reopener is in respect of the tax liability itself (or the increased tax liability) or the costs associated with dealing with it or both. We wonder whether the wording should say "from an increase in the amount of the tax liability and the costs associated with….", likewise in paragraph 14, the reference would be "to recover the additional tax liability and efficient costs….", 15(a) would say "the amount of the increased tax liability….", 5(c) would say "to minimise the tax liability and costs….". The interaction however with paragraph 19 needs to be considered. Will a DN know within three months after the end of the relevant Formula Year, whether there has been an increased tax liability and the amount of it?

(d) Condition E7 Paragraph 23 (c).
We understood Ofgem's Table Log to say that the point that we raised, that where the Authority issue a determination in respect of future years, we should be able to revisit at future allocation of it if it appears to be inaccurate having regard to later events, was agreed. This does not appear to be reflected in the current drafting; in fact, the opposite seems to be the case.

SCE8
We have no comments at this stage on the drafting.

SCE9
We wonder whether the formula should include an RPI adjustment for the term CC as that is expressed in 2005/06 prices. Can Ofgem advise when the RIGs will be issued.

SCE10
We have no comments at this stage.

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.

SCE12
Please see drafting attached.

SCE16
We have no comments at this stage.

SCE17
The reference here to "metering activity" and "meter reading activity" is perhaps unfortunate – this phrase is (yet another) formulation relating to metering which is undefined. It would perhaps be better to refer to "metering business" and "meter reading business" defined for the purpose of the Standard Special Condition A. Otherwise any metering activity of an affiliate or related undertaking would be captured by this, which is evidently not the intent of the Condition.

SCE18

SCE19 (Tariff capped metering activities)
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.

SCE20

CHAPTER 3
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.

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 licencee *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.

We consider however that the consolidation of the obligations in relation to codes of practice and vulnerable customers are appropriate. Key provisions such as; offering facilities for the deaf and blind, ensuring representatives visiting premises are fit to do so and will use a password when requested, production and compliance with a published complaints handling procedure and the reporting of information to the authority remain. The obligations to publish and annually draw to the attention of customers the statements detailing these provisions will ensure customers (whether vulnerable or not) are aware of what to expect from dealings with the licensee. The changes do not remove any of the current protection for vulnerable customers and as such continue to provide adequate protection for these customers.

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?

We agree that it would be appropriate to move SSC A19, 20 and A22 to D9 as they apply to domestic customers which is not applicable to the NTS however we believe that NGT should still be required to publish a complaints procedure. Therefore we believe A21 should stay in part A.

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

Please see our responses to question 1 and 2 above and our detailed comments regarding the specific Licence conditions below.

D9
There is a minor typographical error in para 4(b), para 12 and para 13. In each the reference to para 10 should actually be to para 11.

D10
Under para 11 'specified information' we would suggest that (j) and (k) could be combined and drafted to read 'the number of reports received under paragraph 1(c) that the licensee has identified as falling within the category set out in paragraphs 2(g)(i) or 2(g(ii) and the number of reports in respect of which the licensee has provided the requested service within the timescales set out in paragraph 2(g)(i) and 2(g)(ii) respectively.
We maintain our comments about the acceptability of the emergency service standard.

A34
No present comments

A35
In paragraph 3(c) "formula year" for the purpose of Condition A conditions does not have upper case or reference to subscript "$_t$" and therefore we wonder if the wording would be better phrased as "following the end of that formula year".

Paragraph 4. We do not agree that the provisions of European Directives are directly applicable to us as transporters. I consider therefore that the phrase "has complied

with **its** obligation" should be changed to "as complied with **the** obligation". That least leaves it neutral as to who is subject to the obligations.

A36
We have no present comments.

A37
We have no present comments.

A30
In the new paragraphs 19 and 23 cross-references to the other paragraphs need to be corrected.

A40
We await the review to be conducted at the Cost Reporting Working Group.

D5 & D7

We look forward to reviewing Ofgems updated drafting for both of these as part of the upcoming working groups.

A15
We have been reviewing our thinking in relation to User Pays Services. These seem to be no different from those services which were prior to 1999 known as "services to shippers not ordinarily required" (as contained in the Special Condition 8A of the Transco's then Licence). Although these were never formally defined by Ofgem (we believe, there was only ever one service which was so designated by Ofgem) they appeared to be services not required by shippers generally, but which because of the non-discrimination provisions in Section 9(2)(b) of the Gas Act, would have to be made available to any shipper who requested them and the cost of which would therefore not included within Transco's formula allowances in any particular period. They were however clearly the supply of transportation services, as then defined, and in effect now defined in the Supply of Distribution Network Services as being "undertakings for gain or a reward of engagements **in connection with** the conveyance of gas through the transportation system". Notwithstanding these appear now to be carried out by xoserve, the revenues are being attributed to the transporters and therefore need to be excluded services revenue (correctly). It seems to us that these services must be included within the UNC. They must be available to all gas shippers and all gas shippers must know that they are available. Since in our view they are transportation arrangements Standard Special Condition A11(3) **requires** them to be included within Network Code.

The transporters also need to know what services xoserve is proposing to supply and the methodology and therefore for transparency reasons the services should be included within UNC.

Given that no one transporter controls xoserve, we wonder whether the obligations in paragraph 7 should be "to use best endeavours to ….." do what activity is required.

In paragraph 11, we wonder whether after the words "the costs" there should be

included “and a reasonable element of profit”, as any investment by xoserve will not, presumably, have been covered by any Formula allowance.

4B

We do not find Ofgem’s rationale for drawing this condition into the Gas Distribution Price Control as contained in paragraphs 3.46 and 3.47 of the Final Proposals convincing. The only reference we can find to network extensions in the GDPCR drafting is the discretionary award scheme in Special Condition E10, which seems to be hardly a reasonable reason for including this matter. E10, in any event, has no relevance to the IGTs so the argument can’t possibly be applied to them. History has shown that Ofgem has more than adequate powers to force a methodology change if it requires. It has specific powers under Section 27A to make determinations on connections matter and not only relevant to an individual determination request, but generically (Section 27A (8)). It also has the powers to make determinations by way of Licence or Gas Act enforcement under Section 28 and determinations under Section 21, as it did with the AE Barry determination.

There is an extant on Ofgem’s website, consultations in August 1996 and February 1997 clearly setting out Ofgem’s processes in relation to this and the documents made clear that there was in addition an Ofgem Charging Steering Group which dealt with the charging methodologies.

The requirement therefore to obtain Ofgem’s approval of charging methodology is wholly unnecessary. That said, we have no particular difficulty consulting on methodology changes, but we would propose making the following changes to the proposed Condition 4B.

(a) Delete in paragraph 3 second line “approved by the Authority”.
(b) In paragraph 6, delete the words “except insofar the Authority otherwise consents”
(c) In paragraph 6(b)(v), delete the words “the date on which the period referred to in the sub-paragraph below will expire” and the proviso in its entirety and insert “28 days after the date of such report”.

(d) Delete paragraph 11 as this is already included by virtue of the Utilities Act 2000 in Section 9(2)(a) of the Gas Act.

OTHER COMMENTS

Proposed Licence Conditions associated with Independent systems

Licence conditions on GDNs

We suggest that generally defined terms should be capitalised.

In Para 8 and the definition of "equivalent customers" we would suggest that for consistency "network" is deleted and "pipe-line system" is inserted.

We would suggest that the definition of "Bulk Price Differential" should include interest at the "specified rate", given the time lag in recovery.

We believe that "Bulk supply points" were defined in a direction dated 1st March 1996 by Ofgem and we are not aware if these have changed, we would like Ofgem to clarify this.

In the definition of "Liquified Petroleum Gas" we are not sure that it is good practice to specify the exact standard in case it changes over the period. It may be prudent to use the text "the BS EN standard or equivalent standard from time to time in force"

The definition of "Relevant shipper" should not be limited only to a shipper who has entered into arrangement with us **by 1 April 2008** - this gives that shipper a monopoly or would require a licence change if the shipper changed. It should apply to any gas shipper on an IU.

Licence condition on NTS

In Para 2 we would suggest that the NTS estimate should be required to be the same as we make (and notify to them) - this would have to be done in time for the NTS to include it in their annual charging statement? If this is too complicated the estimate should include interest on any underestimate by the NTS.

The last sentence is too weak. It should say "This estimate shall include any over-recovery or under-recovery of the aggregate amount of the Bulk Price Differential for the previous formula notified to it pursuant to paragraph 3 of this condition together with interest on any under-recovery at the specified rate".

"On a quarterly basis" is vague, it would be more preferable to include specified dates so that we are aware of when we will receive payment.

In Para 3 ‘Bulk Price Differential’ needs to be defined for the purpose of this condition and would need to be the actual sums paid by the DN. Relevant gas transporter also needs to be defined.

We would also suggest that the reference to "gas shippers" is replaced with " relevant shipper " and it is defined as in the GDN condition

We question whether the figures used in paragraph 4 should be set figures or actuals (as was always the case previously). This used to be a pass through- it is not now.

In Para 5 in relation to the reference to "On a quarterly basis" please see our comments on Para 2 above.

In Para 8 RPI should refer to Para 3 of standard Condition 27 which deals generally with RPI - there are several RPIs.

SC20

We responded on the drafting of this condition as part of our response to Ofgems

Proposals to Implement Revised Standards of Performance Arrangements for GTs however we would like to highlight here that.....

We have difficulty in seeing how Ofgem consider that it is has the jurisdiction under Section 33AA of the Gas Act to amend the payment provisions by the licence. We have raised this with them in the past. As a matter of principle I do not see, unless there is specific authority in the Statute (see, for instance, Section 10(5) of the Gas Act), amend the Act or a Statutory Instrument by subsidiary document, namely the Licence.

Therefore, the following words and phrases should be omitted:-

(a) "or any provision of regulations made under Section 33AA of the Act" and "or that provision"; and

(b) paragraph 2(a)

(c) in paragraph 2(c) we have been troubled by the words "failure, act or omission" as these words do not necessarily imply some fault, whether breach of contract or breach of statutory duty or negligence on the part of the downstream transporter. If the downstream transporter is taking proper acts (or indeed omissions) to do whatever works are necessary to bring the downstream supply interruption to a proper conclusion it should not incur any liability to the upstream transporter. It is only when it is not doing that in a proper (RPO(?)) manner that it should incur liability.

We wonder therefore, instead of those words, the following would be better (borrowed from the Definition of "Cross Default Obligation" in Standard Special Condition A39(5) "default (howsoever such default may be described or defined)". This wording does seem to us to better describe what is intended and as in cross default would cover default whether act or, omission and whether negligence, breach of statutory duty, or breach of contract.

(d) In 2(d) we suggest that "determine" is a better word than "settle" as this echoes the wording in Section 7B(5)(a)(iii) Gas Act for provisions relating to determinations by the Authority.

Comments by WWU in red

Appendix 11 – Proposed Special Conditions in Part E for RDNs

SPECIAL CONDITIONS APPLICABLE TO THE LICENSEE (DN): PART E -RDN

Special Condition E12: Distribution Network loss of meter work revenue driver (LM_t).

Special Condition E12: Distribution Network loss of meter work revenue driver (LM_t)

1. The purpose of this condition is to provide for adjustments to the maximum Distribution Network Transportation Activity Revenue to reflect any stranded costs associated with the loss of meter work revenue which is incurred by the licensee in the provision of emergency services.

2. For the purposes of paragraph 5 of Special Condition E2 (Restriction of revenue in respect of the Distribution Network Transportation Activity) the loss of meter work revenue driver in respect of Formula Year t (LM_t) shall be derived from the following formula:

   If $MV_t \leq TPV$, then:

The detail of the formula has been omitted. It is suggested that it should be as follows:

$$LM_t = (TPV - MV_t) \times (LMRD_t \times RPI_t)$$

Otherwise:

$$LM_t = 0$$

where:

MV_t	means the number of ~~emergency service staff~~ metering jobs carried out by emergency staff in respect of the Distribution Network in Formula Year t;
TPV	means the number of ~~emergency service staff~~ metering jobs carried out by emergency staff at the tipping point and is set out in Annex T;
$LMRD_t$	means the loss of meter work revenue driver in Formula Year t and is set out in Annex U; and

RPI_t	has the value given to it by paragraph 5 of Special Condition E2 (Restriction of revenue in respect of the Distribution Network Transportation Activity).

3. For the purposes of this condition, a "Metering ~~Infill~~ Job" is a Metering Job carried out by a person normally engaged, by the licensee in emergency work, ~~or by a third party~~ at any premises to which gas is conveyed by the licensee in order to enable the licensee to meet its obligations under Standard Special Condition A8 (Emergency Services and Enquiry Service Obligations). (the person can be either a GDN member of staff or a contractor).

4. For the purposes of this condition a Metering Job means any of the following services, with in each case a "meter" including all parts of a meter installation as defined within Section M 1.2. of the UNC, including the LP regulator/governor: -

   (a) installing a meter;

   (b) exchanging a meter;

   (c) carrying out an accuracy test;

   (d) exchanging or repairing a damaged meter;

   (e) replacing a meter;

   (f) exchanging a meter battery;

   (g) altering the position of a meter;

   (h) attending or checking a meter (where chargeable);

   (i) removing a meter;

   (j) Fitting or removing a clamp (lock) or security collar to a meter; and

   (k) Engaging a person (up to a full day's hire) [or perhaps " Each visit to customers' premises to carry out……"] to carry out work within the meaning of metering services in Standard Special Condition A3 (Definitions and Interpretations) (other than work already included in paragraphs (a) to (j) of this paragraph)

and any other activity associated with metering which is not included in sub paragraphs (a) to (k) and which is counted as a chargeable visit to a customer's premises.

Annex T – Distribution Network metering work tipping point volume (TPV)

Distribution Network	Metering work tipping point (MV_t)
East of England	225,512
London	124,540
North West	91,040
West Midlands	161,388
Northern	118,753
Scotland	183,696
Southern	369,657
WWU	246060

Annex U – Distribution Network loss of meter work revenue driver ($LMRD_t$)

(2005-6 prices)

Distribution Network	t=1	t=2	t=3	t=4	t=5
East of England	30.8	29.2	27.7	26.2	24.6
London	33.0	31.4	29.7	28.1	26.4
North West	29.8	28.3	26.9	25.4	23.9
West Midlands	27.1	25.8	24.4	23.1	21.7
Northern	38.6	36.7	34.7	32.8	30.9
Scotland	17.6	16.7	15.8	15.0	14.1
Southern	25.0	23.8	22.5	21.2	20.0
WWU	23.4	22.2	21.1	19.9	18.7