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Dear Paul

Proposed process for the determination of re-opener applications in respect of a Traffic Management Act income adjusting event under the first gas distribution price control review.

I am delighted to respond to the above consultation on behalf of the National Joint Utilities Group Ltd. (NJUG), who as you know, is the only UK trade association representing utilities and their contractors solely on street works matters.

NJUG represents 38 utilities and 16 of the major contractors undertaking street works. Although this consultation is focused on gas distribution companies, we have also circulated our response to all our members, as all utility sectors are affected by the impact of the additional street works legislation that has been introduced over the past few years, including the electricity distribution network operators (DNOs).

Clearly, it is for gas distribution companies to respond in detail on the individual financial impacts of the Traffic Management Act 2004 (TMA). NJUG's response is designed to support those individual company responses, whilst making a number of key general points, which we hope are helpful.

NJUG is generally supportive of the outlined process and welcomes:

- Ofgem's recognition of the additional administrative / operational costs and reduction in productivity associated with the TMA permitting and Fixed Penalty Notice (FPN) Regulations.

- Ofgem's acknowledgement of the need to assess local authorities' varying levels of implementation of the different parts of the TMA, which has a big impact on utilities' efficiency and costs – and which varies considerably across England. For example, Kent who operates permits only for major works on their busiest streets, in contrast to London who is applying permits to all works on all streets.

- Ofgem's desire to capture likely future implementation of the TMA – but:
    - We would stress that whilst a number of authorities have indicated their intention to develop permit schemes, this will not preclude others from bringing forward proposals.
    - We welcome consideration of the inclusion of lane rental, as any lane rental scheme will result in considerable additional expenditure for those utilities who operate within its area of implementation – either in incurring the daily charge or avoiding it by working out of hours and / or using innovative techniques such as plating, to return the road to service during traffic-sensitive times.

NJUG

However, the key point we would like to stress is that as well as the additional costs incurred by gas distribution networks and indeed all utilities as a result of the TMA, there has also been an increase in street works costs arising from amendments to, and additional implementation of, New Roads and Street Works Act 1991 provisions since the last price control review.

We therefore urge Ofgem to expand the gas distribution re-opener to include consideration of all additional costs incurred by companies, arising from both the TMA and NRSWA 1991.

We hope that the above points, and **our responses to the two specific consultation questions** overleaf are helpful. In the light of Ofgem's desire to identify future possible increased costs, we have included a short summary of Government's current priorities which, as we discussed, will further increase utility company costs. If you would like to discuss our response or require anything further from us, please do not hesitate to contact me.

Yours sincerely

Les S Guest
Chief Executive, NJUG Ltd.

Ofgem Consultation on the Proposed Process for the Determination of Re-opener Applications in respect of Traffic Management Act income adjusting event under the first Gas Distribution Price Control Review

National Joint Utility Group Ltd. Response to Consultation Questions

Question 1: Do you agree with the overall approach we plan to take and our timetable?

NJUG supports Ofgem's proposed process and the outlined timetable, and in particular welcomes Ofgem's recognition of the additional administrative and operational costs arising from the Traffic Management Act 2004 (TMA), as well as the considerable reduction in productivity, particularly as a result of the introduction of permit schemes (see overleaf for detail).

NJUG also welcomes the desire to capture the likely future implementation of the TMA. **However, there has also been a considerable increase in street works costs since the last gas distribution price control which are not associated with the TMA and therefore NJUG does not agree with Ofgem's interpretation that only TMA costs should be included.**

Below, we have therefore outlined the headline areas of:

- Additional costs arising as a result of the TMA since the last GDN price review;
- Additional costs arising from non-TMA regulations since the last GDN price review;
- Future likely TMA, Transport (Scotland) Act 2005 and NRSWA Costs.

<u>Key Areas of Existing TMA Additional Costs</u>

Permit Schemes
Within those areas where permit schemes operate, utilities have experienced a variety of factors that have impacted on their ability to operate as efficiently as possible. These include m**ore onerous terms and conditions** – including:

- **A greater requirement for out of hours working.**
- **A requirement for detailed traffic management plans for every job**, no matter how small or whatever location.
- **Reduction of the length of pipe insertion allowable** – experience across the utilities sector has shown that some permitting authorities have restricted road space from typically 100 metres to 50 metres, and sometimes even 25 metres. This is to limit the suspension of parking for residents, but it is having a significant impact on productivity by extending overall durations of works; requiring additional 'unnecessary' excavations (with both detrimental economic and environmental consequences.); and leading to the need for additional 'unnecessary' pipe joints.
- **Application of permit schemes** – the regulations allow for a variety of schemes which results in inconsistency of working practices and costs. For example, Kent applies its scheme to major works on the busiest streets, whilst in contrast, London is applying its schemes to all works in all streets. Whilst all the permit schemes result in significant additional costs for utilities, clearly the London scheme's costs are considerably higher in comparison to the Kent and Northamptonshire schemes.

Fixed Penalty Notices

Some authorities issue far more Fixed Penalty Notices (FPNs) than others. This leads to considerable additional administrative burden for those utilities that operate within those particular authorities, including considerable time spent contesting spurious FPNs.

Non-TMA Street Works Additional Costs

As well as the additional costs arising from the TMA, utilities have seen considerable additional costs arising from amendments to / implementation of additional provisions of the New Roads and Street Works Act 1991 including:

- **S74 Overstay Charges –** despite widespread evidence that S74 has been successful in reducing durations and overruns of works since its introduction (TfL report that only 2% of works overrun on their roads – in other words 98% of works are completed within their agreed time; Kent report 96% compliance), utilities are seeing increases in spurious S74 charges being levied by local authorities. This is requiring considerable administrative effort in contesting these charges.

- **Coring** – Particularly prevalent in the North West, but spreading down the country, utilities are seeing a substantial increase in the number of cores being taken, far in excess of those necessary to prove the integrity of utility reinstatements, and at a cost of between £100 to £600 per core. In one particular example, some 53 cores were taken in the footway of a cul de sac.

Future TMA, Transport (Scotland) Act 2005 and NRSWA 1991 Associated Costs

In respect of likely additional future costs from the TMA, we have provided a short overview:

- Whilst a number of authorities have indicated their intention to develop permit schemes (a list of which have been sent to you under separate cover), this does not preclude others from bringing forward proposals.

- Government's current DfT Business Plan includes:
    - **S74 Overstay Charges** – further substantial increases (Government's latest thinking is currently unclear, but the last figures made public included up to £10k per day for works overrunning on the busiest streets (an increase of up to 1900%) and excessive increases of up to 150% for minor works in the footway of category 3 and 4 streets, which cause little disruption).
    - Clearly, there is still a drive for local authorities to realise income from S74 to compensate for a reduction in their highway maintenance budgets.
    - **Lane Rental** – DfT and Transport for London's consultations are currently open and advocate a targeted incentivised scheme with a daily charge of up to £2500, which may be avoided if utilities choose to work out of hours and / or use innovative techniques such as plating to return the carriageway to service during busy times. **However, it is important to stress that in doing so, utilities would incur additional personnel / operational costs – whether it is a result of premium rates for out of hours working or the cost of buying and using plating, which would impact on operational efficiency, with time spent laying down and lifting up plates eating into the time spent actually undertaking the street works element of the work**.

- It is worth highlighting that if Government reversed its current targeted proposals for lane rental and opted for a blanket implementation this would increase costs across all utilities by in excess of £1.5 billion per annum, which we estimate equates to £68 extra per consumer household.
- **Devolvement of approval powers for permit schemes to local authorities** – both local authorities and utilities are against this proposal, the impact of which will be significant in terms of administrative burden and operational efficiency / costs, due to the various applications of different schemes causing considerable inconsistency.

- **The Scottish Government are considering introducing S133 of the Transport (Scotland) Act 2005 –** the Scottish equivalent of S74 overstay charges, despite indications from the Scottish Road Works Commissioner that typically only 3% of works (both utilities and Roads Authorities) overrun; and are also actively considering some form of contribution from utilities towards Roads Authorities' road maintenance costs.

- Given the uncertainty of the likely impact of future TMA and other street works legislation, NJUG believes that **any indicative estimate by GDNs should not prevent a further re-opener if significant additional costs arise** (particularly if a large number of additional authorities not currently envisaged, subsequently bring forward proposals for permit schemes and / or Lane Rental.)

Question 2: Do you agree with our methodology for assessing the efficiency of GDNs in dealing with the impact of TMA?

NJUG agrees with much of the methodology Ofgem is proposing for assessing the efficiency of GDNs in dealing with the impact of TMA. For instance, it seems reasonable to gather information on a uniform basis, and that a combination of approaches will be appropriate – including reviewing the relevant expenditure of GDNs', and their process and procedures.

As above, NJUG does not agree with the exclusion of the additional costs arising from amendments to NRSWA 1991 / implementing new provisions of NRSWA 1991, as these have been considerable, and are legitimately incurred costs arising from the need to comply with non-TMA street works legislation.

We note the intention to carry out cost comparisons across GDNs; review GDNs' strategies and approaches for managing the impacts of TMA; review the effects on productivity; and use relevant distribution network operators (DNOs) information. However, NJUG would also make the following points:

- Electricity DNOs have different operational and safety requirements. GDNs specifically have to comply with the Health & Safety Executive's requirement to replace all cast-iron gas mains within 30 metres of buildings, through agreed risk-profiling processes, which may result in a different operating model, which should be taken into account.

- **It is also important for Ofgem to assess / have a detailed understanding of the different approaches of local authorities in implementing the TMA**. As above, some authorities are implementing permit schemes; some are applying S74 overstay charging or FPNs more aggressively than others; some are using extensive coring or inspections; some are much more proactive in co-ordinating utility works etc.

As above, NJUG welcomes Ofgem's intention to look at how an increase in the number of local authorities implementing the TMA will further impact on GDNs' costs, and welcome the intention to review separately the actual and projected costs associated with local authorities where the TMA is already variously implemented and for those that are expected to implement it in the future.

However, it is important to recognise that any estimate of local authorities' intention to implement the various elements of the TMA is only a 'snap-shot in time,' and will inevitably be subject to substantial variation. **It is vital therefore that a further re-opener is available to GDNs (and electricity DNOs / other utilities) should the cost variance prove to be substantial, as has been the case for this re-opener.**

NJUG welcomes the recognition that companies have introduced new work management systems, additional back-office and in-field administration and staff training in order to minimise the impact of TMA implementation on running their businesses and consequently on their productivity.

The bottom of page 5 of the consultation recognises that the impact on productivity is *"an important element under this ITMA, as we recognise that TMA can potentially impact on GDNs' activities and particularly on their gas mains replacement programmes,"* and that Ofgem will:

- Seek to understand how the restrictions that the TMA has brought in terms of restricted working hours and working areas have affected the way the companies are carrying out their work.
- Expect GDNs to demonstrate through robust evidence the effect on costs / productivity between local authorities that have and have not implemented the TMA, and how GDNs have taken steps or will be taking steps to mitigate their impact.

This is welcome, but it is essential that Ofgem understand not only who has and hasn't implemented the varying parts of the TMA (and other street works regulation) but also to what extent they have pursued individual elements.

We welcome the intention to assess data on permit costs; FPN costs; administration costs; and other costs (as listed).

Finally, NJUG welcomes the intention for GDNs to be allowed to recover any costs for additional costs that are expected up to the end of GDPCR1, including **lane rental – and our comments in answer to Question 1 apply.**