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Dear Mick

**Consultation on Ofgem's minded-to position for the determination of re-opener applications in respect of additional income associated with the Traffic Management Act (and Transport for Scotland Act) under the first gas distribution price control review**

ENA welcomes Ofgem's recognition of the costs arising from implementation of the Traffic Management Act and Transport for Scotland Act. In particular, that costs relating to impaired productivity, additional administration, permits and an efficient level of fixed penalties are allowable.

However, ENA disagrees with the methodology Ofgem has adopted in relation to defining an efficient level of costs, which, in key areas, appears to identify a range of observed values from the evidence provided by National Grid and Scotia Gas Networks and then applies a figure below that range. In relation to productivity, that lower figure is then subject to a reducing rate for future years.

This is compounded by Ofgem not addressing or taking account of evidence provided by GDNs and other parties, which shows that not only do the requirements of different permit schemes vary, but even within the London Permit Scheme, the participating Local Authorities enforce their network management duties differently. This variation in application of permit scheme rules is the reason for the observed range of costs, rather than a measure of relative efficiencies between GDNs.

As Ofgem does not explain why it has reached its conclusions in relation to productivity or administration other than it is "not convinced" it is hard to reach a view other than it has not objectively addressed the licence requirement to allow efficiently incurred costs to be recovered by licensees. For this reason ENA considers that Ofgem should review the methodology it has applied in relation to productivity and administration.

Turning to the principles Ofgem has proposed in relation to working with Local Authorities and improving efficiency and productivity; the GDNs and DNOs have a very good record in this regard and will continue to seek to enhance these aspects of their operations. As far as this relates to the TMA however, it does not follow that this will

ensure reductions in costs associated with street-works. Experience so far would suggest that as Highway Authorities now have complete discretion over how they manage their networks; they can and do impose conditions on utilities that substantially increase the costs of carrying out works. If GDNs and DNOs have to replace mains or cables in a particular location, they cannot avoid these additional costs and because different Authorities will apply different policies, it is impossible to apply uniform working practices in every case which underpin efficient operations.

The initial effects of the TMA are only just being experienced by utilities and already costs and complexity are increasing. As permit schemes evolve and Highway Authorities impose further measures available to them under the TMA and through proposed street-works legislation such as NRSWA Section 74 lane rental and over-stay charges, the burden will substantially grow. Ofgem should therefore not be under any illusion that costs will fall by applying these principles, as the prevailing environment militates against this. It is therefore imperative that the proposals for RIIO-GD1 and ED1 fully reflect this outlook, and a desire to reduce costs for consumers is not confused with the legitimate need for networks to recover the efficient costs of providing essential services for Great Britain. To that end it is better to incentivise efficient behaviour through ex-ante mechanisms rather than ex-post determination.

Finally, ENA welcomes Ofgem's allowance of permit costs in full and the logging of future permit scheme costs and Section 74 charges as they arise within GDPCR1 as a pragmatic approach to address uncertainty over the short-term. In relation to fixed penalty notices, ENA agrees with the principle of allowing recovery of an efficient level of fines, but notes that the driver applied should extend to NRSWA notices as fixed penalties were introduced for noticing infringements under the TMA. In addition, it would be more equitable to apply a weighted penalty cost, rather than the lower £80 as charges range from £80 to £300 over the offence categories. This is a reasonable range, assuming DNOs promptly pay any penalties.

I hope this response is useful and apologise for the late submission, but should you wish to discuss any aspects please contact me at anytime.

I should point out that this letter has not considered issues specific to Scotland. These have been picked up in the individual company responses.

Yours sincerely,

A handwritten signature in black ink that reads "Andy". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Andy Phelps

Director of Regulation  
Energy Networks Association