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By email to: mick.watson@ofgem.gov.uk

24 November 2011

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

Thank you for the opportunity to provide views on Ofgem's minded-to position for adjusting the revenues associated with the introduction of the permitting requirements of the Traffic Management Act (TMA) under GDPCR1.

This response should be regarded as a consolidated response on behalf of UK Power Networks' four electricity distribution licence holding companies – Eastern Power Networks plc, London Power Networks plc, South Eastern Power Networks plc, and UK Power Networks (IDNO) Limited.

I can confirm that this response is non-confidential and can be published via the Ofgem website.

We have considered Ofgem's minded-to position carefully and we are broadly in agreement with the general approach, with one significant caveat.

Drawing on our own experience, we do not believe that Ofgem, in assessing efficient cost levels, has given sufficient attention to the different regimes that operate under the different highways authorities.

Whilst it is reasonable to assume that the cost impacts can be reduced as working relationships with highways authorities develop and working practices are refined, it is also unarguable that different highways authorities are deploying different rules and regulations, applying different conditions to permits, and resourcing their inspection activities to different levels.

The rules, conditions and resourcing are all outside company control and hence it is only reasonable that Ofgem recognises this when arriving at a conclusion.

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In our view, this should imply either a more detailed analysis whereby companies present their evidence on an authority-by-authority basis, and hence additional income is agreed at that level, or alternatively, Ofgem should identify a 'weighted-average' target for the proportions of permit subject to penalty or unit cost reflecting the volume of work in different authority areas and what is realistically achievable in respect of performance, in each of those areas.

The current analysis presented in this consultation rather suggests that the impacts observed under the 'lightest-touch' authorities can be achieved everywhere. We simply do not believe that this is a realistic position.

We have provided some simple statistics from our own activities, in our detailed answer to Question 2, to elaborate on this.

Finally, we note the references to the introduction of Lane Rental and Ofgem's opinion that companies can apply for a revenue adjustment, in respect of costs associated with such schemes, through the use of Special Condition E7.

Both the Department of Transport and Transport for London (TfL) have recently consulted on the introduction of Lane Rental Schemes, and it is clear that TfL is intent on introducing such a scheme at the earliest possible opportunity. Special Condition E7 is designed to respond to the unexpected whereas Lane Rental costs must now be viewed as to be expected within GDPCR1, DPCR5 and future price control periods. Hence we would expect Ofgem to allow companies to log up efficient costs associated with Lane Rental as part of GDPCR1 and DPCR5. Furthermore we believe that reopener mechanisms will need to exist as part of the RIIO-GD1, T1 and most probably ED1 arrangements.

I hope that you will find our response helpful. If any aspect requires further explanation or clarification, please do not hesitate to contact me.

Yours sincerely

Keith Hutton
Head of Regulation
UK Power Networks



Appendix 1

Question 1: Do you agree with the proposed adjustments to the revenues associated with TMA for the three GDNs, North London, Southern and Scotland?

In broad terms, we agree with much of the approach that Ofgem's has adopted when calculating the proposed adjustments to the revenue associated with TMA however, we do have certain significant concerns that we have elaborated on in our response to question 2 (below).

Question 2: Do you agree with the proposed principles that have been set and that these should be applied to future TMA re-openers and price controls?

We agree with the general approach taken by Ofgem and we will be happy to see this repeated in RIIO-ED1, subject to our comments below. We believe that Ofgem has been pragmatic in recognising that it is not always possible or practicable to avoid all fixed penalties associated with permits. We also agree with Ofgem's method for calculating the unit cost of a permit.

However, we have a number of comments about Ofgem's detailed analysis of GDN's workload, Fixed Penalty Notices (FPNs) and 'other costs'.

We note that Ofgem has recognised explicitly that there is an "inconsistency in the application and interpretation of the scheme amongst local authorities". This is a characterisation that is very familiar to UK Power Networks.

In light of this it is not clear to us why Ofgem has adopted an approach based on achieving what is in essence the minimum rate of penalties or lowest unit cost, and a consistency of approach to permitting conditions and matters such as parking bay and bus-stop suspensions, and sought to apply this thinking to all works irrespective of the location. This is tantamount to Ofgem disallowing much of the additional cost associated with the TMA. It is also our observation that the costs associated with administering the scheme within each of the local authorities areas varies considerably according to the specific interpretation applied.

To put some actual numbers around this, the table below shows the proportion of UK Power Networks permits that have been the subject of a fixed penalty notice, in three arguably similar London boroughs:

Local Authority	Proportion of permits subject to penalty (2010/11 regulatory year)
Camden	1.1%
Hammersmith and Fulham	15.1%
Kensington and Chelsea	6.4%

In each case, the mix of work is similar, the working practices are identical and the groundworks are undertaken by the same contractor. The differential results from the different implementations of schemes and the different inspection regimes.

The receipt of fixed penalty notices measures the extent to which we are conforming with the legislative requirements, as implemented in a specific authority. Where an acceptable level of compliance is confirmed, the GDNs, and, by extension, companies such as UK Power Networks should not be forced to bear costs which are genuinely outside management control.

Further to this, we are faced by very different permitting conditions from authority to authority. These can include working out of hours, or at weekend, being obliged to make a number of short-term interventions, rather than a single longer-duration activity. Ofgem should not under-estimate the implications on productivity and hence unit costs of the various conditions that are being routinely encountered.

Such is the deviation between authorities, we would argue that a more accurate and equitable approach would be either to calculate allowed costs for each highway authority in line with the evidence of additional costs that the companies are able to present. Alternatively, a more practical approach might be to construct a 'weighted average' rate of penalty/unit cost/other cost which took account of the balance of work across different highways authorities.

We note Ofgem's position re local authorities implementing permit schemes in the future, and welcome the statement that any costs associated with such schemes can be logged up and presented at the end of this price control period.

We are mindful of the Government's stated intention to remove the requirement for the Secretary of State to approve any new schemes, and hence, in the context of RIIO-T1, GD1 and ED1, Ofgem must provide suitable re-opener mechanisms to allow companies to claim additional income in an environment where adoption of permitting schemes is accelerating and with less oversight of their introduction. An assumption that logging-up will be acceptable in the context of an 8-year price control will not be a reasonable expectation. This situation will be further exacerbated by the imminent introduction of Lane Rental.

Question 3: Do you agree with the timeframe within which it is proposed that additional revenues will be recovered?

We agree with Ofgem's proposed timeframe for the recovery of additional revenue.

