



Mick Watson  
Cost & Outputs  
Distribution  
Ofgem  
9 Millbank  
London, SW1P 3GE

Wales & West House  
Spooner Close  
Celtic Springs  
Coedkernew  
Newport NP10 8FZ  
T. 029 2027 8500  
F. 0870 1450076  
[www.wwutilities.co.uk](http://www.wwutilities.co.uk)

Tŷ Wales & West  
Spooner Close  
Celtic Springs  
Coedcernyw  
Casnewydd NP10 8FZ

24 November 2011

**Consultation on Ofgem 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**

Dear Mick,

We welcome the opportunity to respond to this minded-to position on the application of the re-opener mechanism associated with the Traffic Management Act.

This minded-to position is published just ahead of the GDN business plan submissions to inform their cost and revenue allowances for the 8 years from 2013 to 2021. The outcome of the business planning process will also determine the level of risk sharing between networks and consumers. The level of future risk the GDNs face will impact the cost of equity required by investors, and hence the future required weighted average cost of capital (WACC).

One of the key future uncertainties the GDNs face, is the level of costs associated with the TMA legislation. To address this uncertainty we require a re-opener mechanism. The application of such a re-opener mechanism will significantly impact our ability to recover efficiently incurred costs and consequently the risk we face. Therefore, this minded-to document has a significant impact on our business.

Ofgem has indicated that they will apply the principles established from this minded-to document to future Street works re-opener claims.

Based on the evidence contained within the minded-to document, there are significant flaws with the principles suggested by Ofgem to determine cost allowances which, if applied to future re-opener mechanisms, may result in the non-funding of efficiently incurred costs. The requirement to fund efficiently incurred network costs is a primary duty of Ofgem.

We continue to work very closely with all local authorities in our network, and we have developed a good, practical relationship with them. We have substantial evidence to demonstrate that we successfully challenge a significant proportion of costs levied by them against us. However, despite our good relationship, and as a result of our engagement with them, we expect them to impose TMA costs on us based on the guidance they receive from

24 hour gas escape number  
Rhif 24 awr os bydd nwy yn gollwng

**0800 111 999\***

\*calls will be recorded and may be monitored  
caiff galwadau eu recordio a gellir eu monitro

Wales & West Utilities Limited  
Registered Office:  
Wales & West House, Spooner Close, Coedkernew, Newport NP10 8FZ  
Registered in England and Wales: No. 5046791

national Government, e.g. Permit scheme costs. When this occurs, we must be funded to recover such efficiently incurred costs.

In the remainder of this document, we respond to the specific questions raised.

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

WWU does not agree with some key principles used by Ofgem in their minded-to position for Street works cost allowances in relation to the Traffic Management Act (and Transport for Scotland Act).

On the basis we do not support some of the key principles applied, consequently, we do not agree with the proposed adjustments to the revenues associated with TMA for the three GDNs. The revenue adjustments should be increased to reflect the efficient costs incurred as a result of the Traffic Management Act.

As an example, we have reviewed the revenue adjustment for Permit scheme costs. Based on the evidence within the minded-to document:

- Different (or even the same) permit schemes have been implemented and/or interpreted in different ways by local authorities;
- Different local authorities have applied varying unit costs associated with permit schemes.

The result of these two key points is a varying financial cost to networks wholly dependent on the local authority.

If the evidence submitted clearly demonstrates the range of cost imposed on a network by a local authority, it is incorrect to set a cost allowance which is lower than the range of costs incurred by the network.

If these same principles are applied to future Street works re-opener applications, then costs efficiently incurred by networks will not be funded. We do not believe this position aligns with a primary duty of Ofgem, which is to fund efficiently incurred costs of network operators.

***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?***

As stated above, we do not agree with the key proposed principles and therefore these should not be applied to future TMA re-openers and price controls.

WWU is already committed to working with local authorities in our network to minimise the impact of our street works activities. As a result, over the current price control period our relationship with authorities has significantly improved as demonstrated throughout our stakeholder engagement process.

The present economic climate continues to drive highway authorities to look at all possible ways of increasing their income and this includes FPNs (Fixed Penalty Notice) and Section 74 overrun charges.

We are already in a position where we successfully challenge around 40% of FPNs we receive but with some local authorities now scrutinising Notices down to the minutiae, overall numbers have steadily increased, despite our continuing performance improvement.

With regard to Section 74, overall we have experienced a general increase in liabilities mainly due to the number of local authorities implementing and using the legislation, especially in Wales. These increases are not as a result of any reduction in our focus but rather local authorities increasingly challenge works durations, refusing to extend Notices and being less willing to negotiate charges.

We have also noted that as relationships with local authorities are improving, the expectations placed upon us increases significantly. This includes; requests for flexible working, including weekend and out of hours; specific signage and a general reduction in planning windows. These all result in increased operational costs rather than reductions. The level of both management and administrative support required to meet these expectations and those of wider stakeholders continues to increase as best practice established becomes the minimum requirement for all works across our network.

We would expect the introduction of permit schemes to further drive these factors which will continue to increase operational costs rather than allowing efficiency savings as stated by the minded-to position.

In terms of increasing productivity for street works where a permit scheme is in place; all works are currently undertaken in the most efficient way. We do not agree that further significant improvement in productivity is achievable within those authorities where permit schemes exist or in any other authority where a scheme is yet to be implemented.

Finally, we are concerned that projections relating to the implementation of future permit schemes within the minded-to document have only been based on information supplied by the Department for Transport, rather than in consultation with local authorities who are likely to have powers to approve schemes internally in 2012.

In summary, the above points will result in networks bearing additional permit costs that have been efficiently incurred and which will require funding.

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

We fully support the recovery of costs within the financial year following that in which a re-opener is successfully triggered. Once costs are incurred and subsequently allowed, then networks should be able to recover these costs at the earliest possible opportunity.

Yours faithfully,

A handwritten signature in black ink, appearing to read "S Edwards", with a long horizontal flourish extending to the right.

Steve Edwards  
Head of Regulation and Commercial  
Wales & West Utilities