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24th September 2012

Sent by Email: RIIO.GD1@ofgem.gov.uk

c.c. Paul Branston

Dear Mr Grayburn

RIIO – GD1: Initial Proposals Consultation NJUG Response

The National Joint Utilities Group Ltd (NJUG) is the UK's trade association representing utilities and their contractors solely on street works matters. NJUG represents 38 utilities and 17 of the major contractors who undertake street works across the UK. NJUG's focus is on promoting best practice, self-regulation and a two-way working relationship with Government and other relevant stakeholders. NJUG is also the utility arm of the Highway Authorities and Utilities Committee (HAUC(UK)) working collaboratively with local authorities and UK governments on standards of road and street works in England, Northern Ireland, Scotland and Wales.

We are therefore delighted to be able to provide comments on Ofgem's initial proposals on the gas distribution price control (RIIO – GD1) for 2013 to 2021. Our comments focus on those parts of the proposals which impact on / apply to street works. Therefore, NJUG would like to make the following substantive points:

Ofgem overall approach

NJUG generally supports the move towards an outputs based approach, with six output categories of safety; reliability; environmental; social; connections; and customer services. NJUG's own Vision for Street Works and the HAUC(UK) Code of Conduct focuses on the safety, quality and sustainability of works, and reducing the unfortunate disruption and inconvenience which sometimes arises from essential street works.

We have provided specific responses to the questions relating to streetworks, on cost efficiency and how street works uncertainty will be dealt with over the RIIO-GD1 period.

<u>Cost Efficiency</u>

Targets and Efficient Allowable Costs

The proposed targets by Ofgem are challenging - reducing the safety risk by between 30 to 60%; reducing transport losses by 20%; improving customer service levels to the upper quartile of GDN (Gas Distribution Network) performance; and standards for connecting new customers.

We note that Ofgem's own assessment of an efficient level of costs is materially different from GDNs' proposed costs. Ofgem proposes to require GDNs to close three-quarters of the efficiency gap during the RIIO-GD1 period, including through productivity improvements, whilst also proposing overall cost allowances around 15% lower than the current price control.

NJUG does not believe that achieving the proposed performance targets combined with the suggested reduction in cost allowances is achievable. Cost pressures with regards to street works are significant, and likely to increase further, particularly given the reduction in local authority budgets, which is leading to greater imposition of charges, fines and fees.

The implementation and application of, and approach to permit schemes / lane rental varies considerably by geographical area / local authority. With the spread of non-uniform permit schemes, utilities are seeing dramatic reductions in productivity and an increase in the administrative burden, through the imposition of numerous variations to permit schemes and the different permit conditions they contain.

Specific comments on Costs and Charges

The GDNs have forecast a total of £475.6m for street works expenditure during RIIO GD1. NJUG has several points that we wish to highlight in respect of specific costs:

S74 Overstay Charges – The Government has now confirmed that S74 costs will increase from 1st October 2012. **See Appendix 1 – DfT Tables of Increased S74 Charges.**

It should be noted that most utilities have worked hard to reduce overstay of works (Transport for London quote 98%, and Kent 96% compliance with agreed times), yet utilities performing at these high levels of compliance, will still incur 4 to 8 fold increases in their S74 costs, as a result of these unwarranted and unjustified increases. Indeed charges on Immediate Works undertaken to safeguard life and property could rise in some circumstances from £100 per day to £10,000 per day.

NJUG recommends that Ofgem consider allowing additional funding for GDNs (and Electricity DNOs), as it is clear from local authorities that the additional financial incentive of increased charges will act as an added impetus for them to even more vigorously pursue more S74 charges. In the current economic climate and reduced authority budgets we are already seeing an increase in spurious S74 charges, and utilities are having, and will have to continue to spend, additional administrative effort to discuss, challenge and secure withdrawal of these charges.

Scotland – the Scottish Government / Road Works Commissioner are currently consulting on a revised Specification for the Reinstatement of Openings in the Road (SRORH) and a revised Co-ordination Code of Practice, which have the potential to increase utility costs. The Scottish Government is also actively considering, and intending to consult on introducing the Scottish equivalent of S74 charges (S133 of the New Roads and Street Works Act 1991); introducing permit schemes; and a utility contribution to long-term damage, all of which would increase utility costs, even though overstay performance levels are not causing Scottish Roads Authorities concern at present.

Fixed Penalty Notices (FPNs) – Within the Supporting Document – Cost Efficiency Table 4.3 and Paragraph 4.9 Ofgem allows 3% of FPNs at £80 in respect of incorrect / failure to submit permits, yet FPNs apply equally to incorrect Notices / working without a Notice. Therefore, Ofgem should allow the same proportion for FPNs incurred in authority areas that operate Noticing.

It should also be noted that the charge for a fixed penalty is £120, which is discounted to £80 for prompt payment (within 29 days).

Impact on Productivity – We note that Ofgem has not accepted the arguments by the North London Gas Network of a 30%+ reduction in productivity as a result of certain conditions being imposed as part of the London Common Permit Scheme. It is NJUG's experience that London Authorities are more aggressive in applying permit conditions than elsewhere. The imposition of certain conditions (such as a 50 metre limit regarding insertion of pipes, instead of elsewhere where GDNs can insert up to 100 metres), is reducing productivity, and making it more difficult for utilities to work as efficiently as elsewhere. Also, the London Common Permit Scheme operates on an 'all works' basis, with permits required for every single job, whereas in Kent and Northamptonshire, the scheme focuses on the major roads and so costs are much less, and the ability of the authority and utilities to work together to plan works on those streets to reduce disruption is much enhanced.

NJUG is convening a meeting at the end of 2012 with utilities who operate in London, to explore the differences in approach and the impact on productivity and costs, and we will explore further the levels of productivity reduction other utilities have experienced.

Systems Costs - The cost impact of upgrading systems also needs to be considered - the EToN system needs to be upgraded to meet the ever-changing legislative framework, including permits and lane rental, to ensure compliance levels can be maintained. Upgrades to both EToN and individual work management systems will result in additional costs.

Training and Accreditation – For many years all utility sectors and Highway Authorities have, through HAUC(UK), lobbied hard for the mandatory reassessment of operatives a maximum of every five years. This was finally introduced in April 2011, yet Government has now indicated that they intend to revoke the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009. Utilities are currently awaiting the formal decision from the DfT Minister. However, given that all supervisors and operatives are required to be compliant now, and initial investment has already taken place to ensure such compliance, there has already been, and will continue to be an increase in both training and assessment costs. Both utilities and authorities continue to strongly urge Government to retain the existing approach.

Permit Schemes (£365.8m) – NJUG welcomes the very recent DCMS / DfT announcement on superfast broadband roll-out, which confirms that Government does not now intend to devolve approval of permit schemes until at least 2015. Additionally, between now and 2015, they intend to limit future schemes to the most sensitive streets only. This will go some way to reduce the financial impact of future permit schemes on utilities and their customers. However, we still expect the number of permit schemes in operation during the RIIO-GD1 period to increase. NJUG is aware of a number of schemes being developed, and these are included in Appendix 2. Through HAUC(UK), NJUG has requested that authorities provide a definitive list of schemes being developed; the stage at which they are currently; and likely dates for submission to the Secretary of State and implementation. We will of course forward an updated list of permit schemes to Ofgem once received.

The impact of these schemes will vary according to scheme design. Without the establishment of just a few model permit schemes and an agreed list of appropriate and proportionate model permit conditions, additional costs and significant reductions in productivity will remain. Inconsistency of approach increases administration, complexity and inadvertent non-compliance, with a consequent knock-on increase in S74 charges and / or FPNs. NJUG continues to pursue the joint development of model schemes and conditions through HAUC(UK).

Lane Rental (£34.2m) - The costs of lane rental include not only the cost of paying the lane rental charge, when unavoidable for safety, security of supply, operational or commercial / customer reasons, but also the additional costs of avoiding or minimising the charge (e.g. a wholesale move towards evening and night-time working will have an uplift in labour costs of circa 25%, and the need to ensure ready availability of reinstatement materials on a 24/7 basis will also increase costs). NJUG's comprehensive responses to both DfT's and TfL's lane rental consultations have already been copied to Ofgem (Paul Branston), but if you require further copies please don't hesitate to contact Jane Smith on 0207 3397 3315 or jane@njug.org.uk.

Whilst Government has indicated that it will initially only approve a maximum of three lane rental schemes, it is clearly Government's intention that, if successful, lane rental will be available to other permit authorities within this price control period. TfL's lane rental scheme has already been approved and is in operation; Kent County Council is intending to submit its lane rental scheme application on 5th October, with it coming into operation on 6 May 2013; and we are aware that three London boroughs are working up a scheme (Westminster, Hammersmith and Fulham, and Kensington and Chelsea); with Hampshire County Council keen to explore introducing a lane rental scheme without first running a permit scheme.

Each proposed scheme varies considerably in its approach, which will again lead to increased administrative costs for those GDNs (and other utilities) operating in lane rental scheme areas.

NJUG has committed to work with DfT, TfL and Kent County Council to fully evaluate the costs and benefits of the schemes, before DfT's consideration of further roll-out, and we will share findings with Ofgem.

NJUG is commencing work with utility members to assess experience / impact of the TfL Lane Rental scheme.

NJUG would welcome confirmation of whether Ofgem has included any assumptions for additional costs in respect of any of the other lane rental schemes in development (i.e. we assume costs are based on just TfL's scheme?).

Finally, there is still much uncertainty over the level of charges or avoidance costs that will be incurred as a result of lane rental. GDNs need to establish a balance between working differently to deliver the aims of the lane rental schemes and keeping charges and costs to a minimum.

The usual approach is for GDNs to have to demonstrate that additional costs have been incurred before submitting a re-opener for Ofgem's consideration. However, as TfL's scheme is the first of its kind, NJUG suggests that if Ofgem allow GDNs an allowance upfront, this will enable the development of more innovative working and collaboration with other utilities, therefore keeping costs lower, whilst delivering the objectives of the scheme with respect to reduced disruption.

Full and Half-Width Reinstatement & Long-Term Damage – We note that no companies have forecast street works expenditure for half / full width reinstatement activity, which would costs utilities many millions of pounds per annum.

However, whilst Government currently has no short-term plans to introduce S78 of the NRSWA 1991, as amended by the Traffic Management Act 2004, there still remains continuing pressure from local authorities for a contribution from utilities towards 'long term damage'. Indeed the Transport Research Laboratory has suggested that utilities should pay a guarantee fee of up to £40 per square metre for all reinstatement (S73 of NRSWA 1991). NJUG has led a charge on resisting this, but there is no doubt that it will stay on the agenda, particularly in the light of 20+% cuts in highway authority budgets.

Scope of Street Works included / excluded - We note that *"as the impact of street works costs varies between networks, all street works costs during RIIO-GD1 have been excluded from company submitted costs and subsequent regression analysis."* Ofgem has therefore removed street works costs from work management; repairs; maintenance; repex; connections and mains reinforcement.

NJUG would like to stress that as authorities' budgets have been slashed by 20%+ per annum, some have used the street works regulations as an opportunity for income generation, which therefore enables them to supplement their own highways maintenance budgets.

Whilst many of these provisions are not part of TMA, we are seeing increases in cost from more aggressive implementation of existing NRSWA 1991 regulations, such as coring, where, in particular, the number of inspections outside the scope of the

Inspections Codes of Practice and associated costs have significantly increased in the North West.

Also, when the previous S74 Regulations changed in April 2009, and the prescribed period was reduced from three days to two days, utility companies saw local authorities adopting a much more aggressive stance in challenging down all 3 day works, even when they demonstrated that the works needed that amount of time to be completed safely and to the right quality. Equally, the soon to be introduced increases in S74 of NRSWA 1991 (not TMA) will also considerably increase costs and result in more charges, challenges and disputes (as above).

Encouraging Innovation

NJUG supports the principle of Ofgem incentivising innovation, and the approach of a set allowance for small-scale innovative projects as part of the price control settlement, plus a Network Innovation Competition, and an Innovation Roll-out Mechanism within the price control period.

GDNs (and other utilities) have invested heavily in innovation in respect of street works, including in particular, minimum-dig techniques and use of plating (when safe and practical) to return the road to use during the busiest times. However, it is worth noting that the imposition of permit conditions, such as limiting the length of pipe that can be inserted at one time to 50 metres (because of parking requirements), is negatively impacting on the productivity / applicability of such innovations.

Equally, local authorities are very conservative in their approach toward use of recycled or new reinstatement materials (Rapid drying concrete). NJUG continues to push for a single approval process of new materials through HAUC(UK), but authorities' reticence in accepting new materials is frustrating innovation by utilities.

(See also our comments below regarding our suggestion to consider an upfront allowance to enable GDNs (and electricity DNOs) to invest in innovation to deliver the necessary further step-change which Government wishes to see).

<u>Uncertainty</u>

In respect to the question in Section Finance and Uncertainty (*Question 23: Do you have any other comments in relation to our approach to uncertainty?),* NJUG would like to stress:

- **Ofgem's approach does not take account of all the additional costs being incurred by GDNs (and other utilities) e.g. there is no allowance for future permit schemes which are being rolled out in many authorities across England, which will inevitably increase costs.**
- **Permit Scheme Fees, and either paying or avoiding lane rental charges, are unavoidable.**
- **To truly deliver the changes that Government is seeking through the implementation of permit schemes and lane rental, will need a further step-**

change in performance and way of operating, both of which are likely to incur additional costs.

- **This can only realistically be delivered through investment in increased innovation by GDNs (and other utilities).**
- **To make such an investment GDNs (and other utilities) need certainty and a known reasonable level of funding.**
- **NJUG therefore suggests that Ofgem considers an upfront allowance for GDNs (and Electricity DNOs) as this will incentivise investment to deliver further efficiencies; in innovation to avoid disruption; and in compliance at an efficient level.**
- **New legislation or the enactment of existing legislation / regulation impacts on the ability of GDNs (and electricity DNOs) to accurately forecast costs during price control periods, therefore leading to additional income-adjusting events.**
- **Therefore, utilities need clear guidance on how these costs will be funded and allowed for.**

NJUG hopes that these comments are helpful to Ofgem in its deliberations on RIIO - GD1, and we would be delighted to discuss any points on which you require clarification. Should have any queries please don’t hesitate to contact me.

Yours sincerely

Les Guest
CEO
National Joint Utilities Group Ltd

NJUG

Appendix 1

DfT - Table 1

Revised Charges in relation to works occupying the carriageway during period of overrun.

(1) Item	*(2) Description of street*	*(3) Amount (£)(each of first three days)*	*(4) Amount (£) (each subsequent day)*
1.	Traffic-sensitive street or protected street not in road category 2, 3 or 4.	5000	10000
2.	Other street not in road category 2, 3 or 4.	2500	2500
3.	Traffic-sensitive street or protected street in road category 2.	3000	8000
4.	Other street in road category 2.	2000	2000
5.	Traffic-sensitive street or protected street in road category 3 or 4.	750	750
6.	Other street in road category 3 or 4.	250	250

DfT Table 2

Revised Charges in relation to works outside the carriageway during period of overrun.

(1) Item	*(2) Description of Street*	*(3) Amount (£) (each day)*
1.	Street not in road category 2, 3 or 4.	2500
2.	Street in road category 2.	2000
3.	Street in road category 3 or 4.	250

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Appendix 2

Permit Scheme status as at 10/9/12

Scheme name	Authorities participating	Implemented Y/N	Approval given Y/N	In consultation? Y/N	Considering a Scheme Y/N	Actual / Planned implementation date
London	Barnet Greenwich Barking and Dagenham Brent Harrow Hillingdon Bromley Lambeth Camden Newham City of London Richmond Croydon Southwark Ealing Waltham Forest Enfield Hackney Hammersmith and Fulham Haringey Hounslow Islington Kensington and Chelsea Lewisham Redbridge Wandsworth City of Westminster	y				Jan 10 to Nov 11
Kent	Kent	y				Jan-10
Northamptonshire	Northamptonshire	y				Jan-11
St Helens	St Helens	y				Apr-12
Yorkshire phase 1	Barnsley Doncaster Kirklees Leeds Rotherham Sheffield	y				Jun-12
Greater Manchester	Bolton Bury Manchester Oldham Rochdale Salford Stockport Tameside Trafford Wigan					
East of England	Bedford Hertfordshire Luton Southend on Sea					
London phase 4	Bexley Havering Kingston Merton Sutton Tower Hamlet					
Buckinghamshire	Buckinghamshire					
Derby	Derby					
Essex	Essex					
Leicester	Leicester					
Liverpool	Liverpool					
Nottingham	Nottingham					
Surrey	Surrey					
Sussex	Sussex					
Yorkshire phase 2	Bradford Calderdale Wakefield					
Lancashire	?					
West Midlands	?					

This table has been submitted to the Joint Authorities Group (JAG) on 10th September 2012 for confirmation of accuracy and any additional schemes they may be aware of.