



To Licensed Gas Transporters,
Shippers and Suppliers; Health
and Safety Executive;
Consumers; Customer groups
and other interested parties

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Date: 20 November 2012

Dear Colleague

Update on Declaration concerning ownership of and responsibility for Uniform Network Code Sub-Deduct Arrangements

On 12 September 2011, following consultation, we published the Authority's Declaration¹ of its understanding of the current factual and legal position on ownership and responsibility for UNC Sub-Deduct Arrangements ("the Declaration"). This followed our open letter dated 18 March 2011 and subsequent consultation and consideration of the responses received.²

The Declaration states that, other than where a site owner or operator has made a specific choice to convey gas through a UNC Sub-Deduct Arrangement, we consider National Grid Gas ("NGG") to be the default owner and operator of each UNC Sub-Deduct Arrangement in Great Britain ("GB"). It also sets out the reasons for and the potential implications of the Declaration.

Following that Declaration, the Health and Safety Executive ("HSE") clarified its understanding of the meaning of 'operator' within the context of the Pipelines Safety Regulations 1996 ("PSR"), which is the health and safety legislation applicable to all gas pipes in the United Kingdom including UNC Sub-Deduct Arrangements. In a number of cases, the HSE's interpretation of the PSR would lead to the identification of an operator for UNC Sub-Deduct Arrangements that is different from the operator identified in our Declaration (i.e. someone other than NGG).

Regulation 2 of the PSR defines a pipeline "operator" as -

(a) the person who is to have or (once fluid is conveyed) has control over the conveyance of fluid in the pipeline

The HSE advised us that it considers that, in the case of sub-deduct networks, control over, and access to, the primary Emergency Control Valve ("ECV") will be the principal factor in identifying the PSR operator of the relevant pipe(s) up to and including the ECV(s) located upstream of the secondary meters.

In contrast to the approach taken in our Declaration, the HSE considers that, while pipeline ownership is one factor to be taken into account when considering who operates a pipeline,

¹ <http://www.ofgem.gov.uk/Networks/GasDistr/GasDistrPol/Documents1/FinalDeclarationLetterSubDeduct12092011.pdf>

² <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=OpenLetterSubDeductv1%2018.pdf&refer=Networks/GasDistr/GasDistrPol>

it is not the sole or determining factor. The HSE further indicated that merely having the ability to either open or close the Primary ECV, does not in itself amount to 'control' within the meaning of the PSR.

Therefore the HSE has advised us that a person who has access to the Primary ECV, but no demonstrable understanding of when it can be used safely, will not be considered the operator where another person with access to the Primary ECV does have that understanding.

As a consequence, the HSE has advised us that, subject to the points above, where the sub-deduct pipe(s) owner, the downstream consumer(s) or the adjacent GDN all have knowledge of the whereabouts of, and access to, the primary ECV; and where none of the parties has assumed the role of PSR operator, it is the HSE's interpretation of the PSR that the GDN who operates the pipe on which the Primary ECV is located will also be the PSR pipeline operator for the adjacent sub-deduct pipe(s).

As the HSE is the regulator charged with implementation and *enforcement* of the PSR, we take careful note of its legal interpretation of those Regulations as regards the "operator" of UNC Sub-Deduct Arrangements. Since our current Declaration may conflict in some instances with HSE's interpretation, we consider it necessary and appropriate in line with our principal objective and general duties formally to withdraw that Declaration.

Thus, in consideration of its principal objective and general duties, and in particular the need for a consistent regulatory approach to the interpretation of the PSR and the allocation of responsibility for safety and maintenance of Sub-Deduct Arrangements, the Authority, from the date of this letter, formally withdraws the Declaration published on 12 September 2011.

As a result of the HSE's interpretation of the PSR, persons other than NGG (including GDNs) may be considered operators of UNC Sub Deduct Arrangements. In those circumstances, some GDNs may consider it necessary to undertake risk mitigation measures or replacement works on UNC Sub Deduct Arrangements in order to fulfil their statutory obligations. Ofgem will consider any application for funding for related efficiently incurred costs under an uncertainty mechanism that will be established in RIIO-GD1 Final Proposals, due to be published in December 2012.

Queries relating to the content of this letter should be sent to the above address for the attention of Steve Brown or emailed to steve.brown@ofgem.gov.uk.

Yours faithfully,

Hannah Nixon
Senior Partner, Distribution
For and on behalf of the Authority