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Gallows Hill, Warwick
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*calls will be recorded and may be monitored

Ofgem
9 Millbank
London
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For the attention of Paul Branston

Sent by email
25 November 2013

Tony Nixon
RIIO Strategy and Innovation Manager

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Dear Paul

Response to Ofgem minded-to position for the determination of an income adjusting event claim associated with the Traffic Management Act and the Transport (Scotland) Act under the first gas distribution price control review.

Further to the publication of Ofgem's minded to position on 22 October 2013 regarding the above, we do not agree with the Ofgem assessment and proposed adjustments for our London Network and our main points are set out below.

Lane Rental Costs

Our main area of disagreement is with regard to the disallowance of Lane Rental Payments driven by the introduction of the Transport for London Lane Rental Scheme (TLRS). We believe our claim to be at an efficient level supported by the following points that were included in our claim.

- Our claim has been limited to Lane Rental fees paid[1] and we have not included costs we have incurred in instances where we have avoided lane rental charges by changing our working practices. This was to ensure minimal debate and regulatory burden to close out our GDPCR1 price control period for the TLRS that had only been fully operational for 6 months prior to our claim, with a number of works exempt from Lane Rental Fees due to the London Olympics.

- The proportion of our works that have avoided TLRS charges is 91%[2] of the total chargeable days. We have delivered this through the processes and steps we have put in place to minimise the costs, which we believe are sufficient and proportionate to the level of costs claimed.

- We do not agree that Ofgem had made it clear that the 'efficient / optimal course of action' needed to be demonstrated. Ofgem did ask for evidence of cost avoidance and our submission demonstrated the steps we have taken to minimise the costs incurred.

[1] Includes accruals up to 31 March 2013 as agreed with Ofgem.
[2] Updated to reflect close out of accruals post June 2013.

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Due to the minded-to position taken by Ofgem, we would like to highlight the following additional points that we believe demonstrate it is unreasonable to disallow our lane rental claim that we have limited to the charges paid.

- In developing the TLRS, Transport for London (TfL) acknowledged that there would be a period up to around 2015 before Lane Rental fees would improve significantly as it will take time for contractual changes and innovation to 'sink in'[3]. Therefore, TfL had not anticipated an optimal course of action from the outset of the scheme. We do not understand why Ofgem believe only the optimal course of action should be funded, when a number of innovations are needed to reduce the impact from Streetworks before an optimal level is achieved, as indicated by TfL.

- TfL have, in June 2013, published their Scheme monitoring report[4], which indicates the TLRS has been a success and that utilities have avoided charges in 92% of occurrences and TfL have stated that this is 'impressive early behaviour changes by all works promoters'. A specific example is given in the report to highlight where we (National Grid Gas) had deliberately altered our planned works by constructing a path on private land rather than close a lane on the A40 for site access to our mains replacement activity.

- Since our June submission, through our works completion processes we have been able to successfully review with TfL all TLRS jobs and reduced the lane rental fees on 9 jobs which results in a £0.316m cost reduction for 12/13 to £0.234m from £0.55m.

In the face of independent corroborating evidence from TfL itself on the success of cost avoidance, and the actions we have taken to ensure lane rental fees are avoided, it is entirely unreasonable to disallow incurred costs.

To allow Ofgem to compare against the TfL data in their Scheme monitoring report, we have tabulated the information, provided in our original submission, which allows comparison to the TfL report and provides a summary of the reasons we had been able to avoid charges for each job. The table is provided within the attachment to this letter together with our points in more detail on why we believe the claim is valid and proportionate.

Therefore, we request that Ofgem, in consideration of the above points, allow the lane rental fees paid for 12/13 (£0.234m).

[3] TLRS Cost Benefit Analysis V1.1 Dated 5 August 2011 page 30 - https://consultations.tfl.gov.uk/streets/lane-rental/supporting_documents/CoBA%20v1.1.pdf

[4] Transport for London Lane Rental Scheme Monitoring Report 2012/13 – Para 4.1 page 8

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Productivity Costs

With regard to Productivity Costs, our aim has been to provide Ofgem with the information requested as set out in the first Ofgem decision document for TMA dated 20 December 2011 that would allow assessment of the productivity costs specifically for our London Network, which we believe are unique and different to other parts of the UK.

We had been required to provide costs incurred pre and post TMA to demonstrate the impacts of Permit Scheme legislation, which we believe we have achieved. This allows Ofgem to assess the impact from a given reference point.

Not only did we provide this productivity impact for each year of the GDPCR1 price control period, we included two further data sets being;

1. Cost output from over 170km of mains laid (circa 50% of a full years work) in 12/13 that identified the specific labour costs for works in permit scheme areas; and
2. A view across all our mains replacement contractors of the labour costs achieved to show that this was not a National Grid Gas underlying productivity issue.

In addition to the information in our submission, Ofgem have referenced in their minded-to position that our replacement unit costs per metre for 2011-12 were significantly higher and had not been justified. However, we would like to point out that Ofgem have benchmarked[5] our 2011-12 costs as part of the RIIO-GD1 price control submission and, for our Replacement Activity, our London network was placed third out of all GDNs. Therefore, we believe the evidence presented in our submission and the Ofgem benchmarking for RIIO-GD1, provides sufficient evidence to support our unit costs for 2011-12 being efficient.

Therefore, we request that Ofgem, in consideration of the above points, reconsider allowing the productivity costs of (£0.26m) for 2011-12 and 2012-13.

Change to Productivity claim

Ofgem's letter can be read that our claim was reduced by £0.9m due to a number of errors and data inconsistencies, which would be inaccurate. We acknowledge there was an error within our claim, which if adjusted, would have resulted in our claim increasing by £8,000 or less than 1% of the revised claim value. With reference to the £0.9m adjustment, we had asked Ofgem to consider including the £0.9m in our claim for the productivity impacts over and above the £18/m we had identified through our analysis for 2009-10 and 2010-11, on the basis that we had minimised the impact in the final year of GDPCR1 (2012-13) by working in areas of London where the productivity impacts were lower.

It was confirmed by Ofgem that an adjustment to recognise the impact in 2009-10 and 2010-11 was not possible as a decision had been reached in the previous TMA reopener in 2011. Whilst we believe a change could have been made to our 2011-12 and 2012-13 allowances in recognition for the wider benefits of our actions to minimise the costs, we withdrew the £0.9m from our claim.

[5] Benchmarking adjusts for workload, diameter mix and network specific factors (e.g. labour costs).

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RIIO-GD1

We recognise that we are now in a new regulatory period under RIIO and would like to work with Ofgem to assist us in minimising the cost of Streetworks legislation on gas and electricity customers. Where costs are not able to be mitigated or avoided, they should be funded where efficiently incurred.

To achieve this objective, both Ofgem and licensees need absolute clarity about the information and evidence required to support a claim for any of the RIIO-GD1 uncertainty mechanisms. In defining this, the costs and resources required to administer and collate the data should be proportionate to the likely materiality of cost to customer bills.

In light of our collective experience and lessons from the GDPCR1 IAE process, we would like to discuss and agree a clear understanding of what data will be required by Ofgem and how the data will be used to determine the efficient cost in the RIIO-GD1 uncertainty mechanism windows.

Yours sincerely

Sent by email

Tony Nixon
Strategy and Innovation Manager
Gas Distribution
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Attachment to Letter Dated 25 November 2013

Lane Rental payments

We do not agree with the disallowance of fees paid by us to undertake works on the Transport for London Road Network (TLRN) under the Transport for London Lane Rental Scheme (TLRS), where we and all other utilities have performed well in reducing disruption in the first 6 months of the lane rental scheme operation.

Our key points with regard to our Lane Rental claim are as follows.

Claim and evidence of our approach to minimise lane rental fees

The pre lane rental submission requirements identified by Ofgem were to provide;

- Number of jobs by work type;
- Number of days we have occupied a lane rental road by work type;
- Fees paid; and
- Avoidance costs.

In summary, without changing our practices and incurring additional cost to avoid lane rental charges our Lane Rental fees would have equated to £4.1m[6] when our total claim is £0.234m resulting from a 91% reduction in road occupation.

Due to the Olympic Embargo, which allowed some of our works to continue without incurring a charge, and that the scheme was only effective for a short period of GDPCR1, we have limited our claim to the fees paid rather than include cost to avoid. Again, it has not been recognised that we have taken a balanced view about our claim to close out the GDPCR1 price control, rather than enter a debate on what would be the efficient level of cost avoidance, when this is the only lane rental scheme in operation in the UK, that has been in operation over a relatively limited period at the end of GDPCR1 and which has been influenced significantly by the Olympic Embargo.

In support of our claim, we provided job by job information showing but not limited to;

- Location of the works;
- Whether we had been able to restrict our works to footpath thus avoiding the charge;
- The number of days on site; and
- The number of days where we had received an invoice for.

In addition, we provided supporting evidence on efficient practices, including;

- The use of Core and Vac technology that we have introduced to reduce time on site;
- The use of Rapid Cure Concrete which significantly reduces the duration of occupation on TFLN; and
- An algorithm that allow us to consider when to start our works for emergency repairs and connections given the lane rental charge periods.

[6] Total value including Olympic Embargo works.

We believe the information presented in our claim was sufficient to allow Ofgem to allow recovery of the residual lane rental payments for 2012-13 we had been unable to avoid as there is no debate on whether these had been incurred or accrued for.

Ofgem Lane Rental evidence requirements

We do not agree with Ofgem that GDNs needed to demonstrate that we have processes in place to take the optimal course of action prior to our submission given the requirements documented in the agreed data table and through our discussions and meetings. Notwithstanding this, as indicated above, our evidence included the decision tools we have developed for each Emergency and Connection job in order to minimise the exposure to lane rental charges.

In response to the minded-to position we have provided the following additional detail, which is similar to the information set out by TfL in their June 2013 report.

Work Type	Number of Jobs in Lane Rental area	Actual Job Duration	Actual Job Duration (Days per Job)	Cost works in Lane Rental periods (£)	Actual Days in Highway	Actual Highway Duration (Days per Job)	Actual invoiced costs (£)	Percentage of Days in Highway	Money %
Emergency	139	798	6	1,011,600	70	0.50	74,100	9%	7%
Major	35	1475	42	2,506,000	82	2.34	63,200	6%	3%
Minor	56	136	2	229,500	13	0.23	30,000	10%	13%
Standard	29	239	8	354,400	73	2.52	66,900	31%	19%
Total	**259**	**2648**		**4,101,500**	**238**		**234,200**	**9%**	**6%**

Note: Excludes 4 jobs withdrawn as part of accrual review and work completion process, i.e. 263 jobs reduced to 259.

Whilst a number of jobs were undertaken due to the Olympic Embargo and are not chargeable, there has been a significant reduction in the occupation of the highway. Lane Rental charges were avoided in 219 jobs and the four main avoidance reasons represent c85% of the avoidance methods. These methods are;

Restricted works to Footway (68%): Action taken to avoid encroachment into highway, such as smaller excavations in footway, alternative site to store operational vehicles and materials, etc.

Exempt works (9.5%): Worked outside the Lane Rental zone by using designated areas, such as works within parking bays, bus lanes etc where exemptions apply.

Out of hours (3.7%): Where works have been undertaken outside the designated Lane Rental times, e.g. outside normal working hours in the week or at weekends.

Innovation & Collaboration (3.7%): Deployment of innovative techniques to minimise job duration and use outside the lane rental periods as detailed in our original submission. In addition, we have worked collaboratively with either other works promoters or the highway authority to reduce the charges to National Grid.

Stakeholder views on Lane Rental

We understand that stakeholders may not be supportive of allowing the residual lane rental fees to be paid to utility companies as this may not encourage utilities to avoid working in lane rental areas. However, our claim is for lane rental payments incurred at the very early stages of the lane rental scheme and are those that we have been unable to avoid. We have not suggested using this income adjusting event to set allowances going forward and by May 2015 (RIIO-GD1 uncertain cost reopener window) we will have more detailed understanding of the lane rental effects and what can be done to minimise the payments when the costs to avoid are lower than the lane rental fees.

TfL Scheme Monitoring Report publication

Since or during our TMA submission preparation in June 2013, Transport for London (TfL) issued a Scheme monitoring report. The following paragraphs have been taken from their executive summary:

"Following the implementation of the TLRS 99% of Transport for London (TfL) works and 92% of utility works avoided incurring a TRLS charge. However it should be noted that there were some instances where TLRS fees were waived or where works were exempt from charges due to transitional arrangements and therefore the full effect of the scheme may not yet have been felt".

"Analysis shows just 32% of days where works were requested to take place during traffic-sensitive times were approved, showing that TfL is taking an active role in ensuring that the number of days that works take place during traffic sensitive times is kept to a minimum".

"This report shows that TLRS has been successful since it was implemented. Journey times and JTR have improved beyond what was expected and serious and severe disruption due to road works has decreased. This is true for the scheme as a whole and for individual case studies".

Given the success of the scheme identified by TfL at this stage of operation and the need to work with TfL to reduce our occupation of the highway, we do not see any reason why the fees incurred cannot be funded recognising we have not included the additional cost to avoid such charges in other instances.

TfL – Lane Rental Scheme Cost Benefit Analysis

Again, to support the payment of the residual elements of lane rental charges incurred, we have reviewed the Transport for London Cost Benefit Analysis document (CoBA v1.1.doc issued 5 August 2011), which identified a number of core assumptions regarding the behavioural change. A key point from this is regarding the behavioural change required by utilities and, as set out in the Cost Benefit Analysis, TfL have recognised the TLRS will take time to deliver an optimum level of avoidance from the behavioural changes.

"In the longer term, say from 2015 onwards, technological and contractual changes will have sunk in. At this horizon and after, it is assumed that clearing the carriageway during traffic sensitive times will cost 30% less than initially".

Whilst we would debate the level of efficiency that can be delivered, we do agree that due to the limited number of technologies available (such as, road plating) and availability of alternative reinstatement materials (such as rapid cure concrete that is currently not an approved material and subject to local agreements, which we have demonstrated we have used) there will be an initial higher cost before we achieve an efficient level.

Given the above we believe this external independent evidence of TfL supports our view that our claim is a reasonable level for the charges incurred.