

Western Power Distribution  
Avonbank  
Feeder Road  
Bristol  
BS2 0TB

0117 933 2203  
[pbranston@westernpower.co.uk](mailto:pbranston@westernpower.co.uk)

Steve McMahon  
Deputy Director, Systems and Networks  
The Office of Gas and Electricity Markets  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

6 September 2019

**By e-mail**

Dear Steve,

**WPD Response to the RIIO-ED1 Reopener Consultation – Specified Street Works Costs 2<sup>nd</sup> Aug 2019**

This correspondence has been written on behalf of Western Power Distribution (South Wales) plc., Western Power Distribution (South West) plc., Western Power Distribution (East Midlands) plc. and Western Power Distribution (West Midlands) plc.

Thank you for the opportunity to respond to the RIIO-ED1 Reopener Consultation on Specified Street Works Costs (SSWC). We consider our approach to responding to this consultation comprehensive but proportionate, given the precedence that Ofgem's reopener decision will have on any future implemented logging up assessment and / or ex-post review at RIIO-ED2.

Please refer to Annex 1 to this letter for our detailed response. Whilst this contains many points of detail, we urge that due consideration is paid to the underlying principle of an uncertainty mechanism. This was designed to allow the recovery of costs that were not known at the outset of the RIIO-ED1 price control process. Ofgem's approach to the subsequent assessment process of this reopener sends a message to the industry and investors about regulatory certainty going into RIIO-2. Within our response, we suggest several approaches to ensure we are awarded a fair allowance for additional costs efficiently incurred. Our original submission and this response seek to ensure relevant efficient costs incurred to date and expected to be incurred in the near future are covered by RIIO-ED1 allowances. We therefore urge Ofgem to review our response with this principle in mind.

We welcomed the opportunity to meet with the Ofgem team on 2 September 2019 to discuss the key points relating to this reopener. The following is a summary of the key discussion points:

- 1) The need for greater recognition of policy uncertainties, current and forthcoming, inclusive of new permit schemes, lane rental and Department for Transport (DfT) legislative changes and their respective timing of implementation, all of which are beyond DNO control.
- 2) Ofgem's exclusion of WPD's data from the minded to unit cost benchmarks and the need for WPD to justify why our costs are above the benchmark. Our original submission set out why our inter WPD-licensee DNO costs differ. Examples of Highway Authority (HA) specific requirements in our network areas were set out within our claim. WPD are however ill-positioned to justify why our costs are above the Ofgem benchmark given we have not had sight of other DNO costs and therefore cannot assess the detailed cost make-up of other DNOs' submissions which were submitted to Ofgem as part of the claims. We note this matter was only brought to our

attention due to WPD's request to meet with Ofgem and the specific concern we raised in the meeting regarding our omission from the benchmark. Condition costs were, in particular, discussed and we therefore include additional information in this formal consultation response to support our original submission.

- 3) The need for Ofgem to provide clarification and written assurance that a logging up mechanism of RIIO-ED1 SSWC will take place and clarity as to how and when this will be implemented and assessed. This is imperative for two key reasons. Firstly, neither the guidance nor Ofgem's formal consultation provides assurance that the incurrence of relevant future costs before the end of RIIO-ED1 can be recovered. Secondly, Ofgem have previously changed their communicated position with regard to logging up and therefore certainty is needed that a logging up will now go ahead. WPD and Ofgem discussed the possibility of an ex-post review of costs at the end of RIIO-ED1 during our bilateral meeting (March 2019), recognising the uncertainty around certain future costs. This option was subsequently not implemented.

In addition to the above points, WPD have a number of further concerns regarding the assessment process Ofgem has followed, the application of street works policy and the form of the quantitative assessment used in the reopener.

WPD considers the assessment to be unjustifiably punitive. The assessment processes applied appear at best to cherry pick supportive clauses from guidance to this outcome whilst overlooking others. This is similarly true for the application of past regulatory precedence to the ED1 assessment. For example, cherry picking the application of a three per cent efficiency challenge from Ofgem's assessment of Cadent's RIIO-GD1 SSWC claim and applying it inconsistently across controls despite formal announcement in this consultation that the approach was consistent; whilst overlooking other aspects of precedence from the same assessment altogether.

It was understood that the reopener mechanism would be both backward and forward looking. WPD consider that Ofgem have incorrectly applied the materiality assessment and that the use of 12 months of actual cost data as a screening criterion in the reopener, as currently interpreted, effectively means that the assessment of claims currently hinges on the timing of the roll-out of schemes, which is ultimately beyond management control. It would appear therefore this is an uncertainty mechanism in name but not in practice. Furthermore, whilst WPD previously notified Ofgem of the lack of historical cost data in SWEST and for lane rental prior to the reopener window, the use of the 12 months clause was not raised with DNOs before submission.

Ofgem's quantitative assessment, assumptions and implied results lack line of sight to the policy context in which they are developed. Non-comparability of data and inconsistent methodological approaches, which neither make sense from a mathematical or regulatory perspective, lead to an assessed view of unit cost benchmarks and 'reasonableness' of volumes that are invalid without necessary adjustments and normalisations, and are uninterpretable without extensive caveating. Ultimately, Ofgem's approach fails to align the regulatory purpose of an uncertainty mechanism with the policy context or embed these learnings in the assumptions used to inform assessment.

WPD request that Ofgem further considers both their process and quantitative assessment methods in advance of their final decision.

On a more general note, WPD are disappointed with how the reopener has been managed to date. In particular, with regard to Ofgem's change in minded to allowances for EMID and WMID published on Ofgem's website without due notification either to ourselves or other stakeholders. Had it not been for a chance revisit by WPD to the formal consultation webpage, this non-publicised update may have gone unnoticed by stakeholders for a greater passage of time. In addition, given Ofgem recognises the significant differences between the DNO submissions, the lack of clarification questions from Ofgem prior to its draft determination is both surprising and disappointing and hence raises concerns over the comparability of the data used by Ofgem in its assessment.

Post our meeting with the Ofgem team on 2 September, Ofgem sought our understanding of CRC3F.25 and whether WPD's future lane rental costs were in scope of the uncertainty mechanism - stating that WPD's reopener did not cover lane rental costs as these weren't specifically stated in our Licence, unlike the slow track companies. WPD was clear in our fast tracked RIIO-ED1 business plan that the proposed street works uncertainty mechanism covered all additional

street work costs<sup>1</sup> - excluding only permit schemes which had already been in operation for 12 months in our networks. Hence any uncertainty mechanism covers all new permit schemes, Lane Rental schemes and any other street work initiatives brought in under the Traffic Management Act (TMA). Whilst Lane Rental costs are identified separately in slow track Licences as a separate item to permit costs, WPD's Licence references the associated RIGs which clearly indicate lane rental costs are part of Street Works (see Annex 6).

As was identified at the start of RIIO-ED1, Street works and the implementation of permit schemes continues to be a dynamic and fast-moving environment; of which the uncertainty mechanism recognised that costs would be significant. We expect more Highway Authorities to confirm their intention to move to permit schemes in the very near future, each with their own specific nuances which must be considered. Implementation of the Street Manager system by DfT is on the immediate horizon with lane rental schemes expected before the close of RIIO-ED1 and in this infant policy context, it is our preference, subject to written assurance and sufficient clarity on the logging up mechanism from Ofgem, to delay assessment of all our submitted reopener costs until the logging up window at the end of RIIO-ED1.

We acknowledge the extension of the deadline for this consultation to midday Tuesday 10 September 2019 (from midday 6 September). However because this was only communicated by Ofgem at 9.57am on 6 September (2 hours ahead of deadline) and so our response at this time was materially complete and signed-off, we are submitting on 6 September as originally notified.

WPD look forward to further clarification on the issues raised and further engagement with Ofgem as the consultation process proceeds.

Yours sincerely,



**Paul Branston**

Regulatory and Government Affairs Manager  
Western Power Distribution

**Enclosed (6 documents):**

- Annex 1: WPD's detailed response to the RIIO-ED1 SSWC Reopener Consultation (in document, PDF)
- Annex 2: Summary of the Permit Administration and Permit Condition Costs submitted by DNOs in the RIIO-ED1 SSWC Reopener (in document, PDF)
- Annex 3: Further evidence on imposition of Permit Condition Costs by Highway Authorities (in document, PDF)
- Annex 4: WPD Examples of Highway Authority Imposed Variations (in document, PDF)
- Annex 5: Highway Authority Updates regarding the roll-out of permit schemes (in document, PDF)
- Annex 6: Definition of Street Works, as per the Licence and the RIGs (in document, PDF)

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<sup>1</sup> WPD (2013) RIIO-ED1 Business Plan, SA-06 Supplementary Annex – Uncertainty, section 7

## Annex 1: WPD's detailed response to the RIIO-ED1 SSWC Reopener Consultation

Annex 1 sets out WPD's detailed response to the formal RIIO-ED1 Reopener Consultation on Specified Street Works Costs. WPD's response to the general consultation questions below should be implicit throughout the covering letter above and our detailed comments.

- 1) Do you have any views on our assessment methodology?
- 2) Do you have any views on the outcome of our assessment?

WPD's response has been organised as follows:

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# 1 REGULATORY PROCESS

## A logging-up mechanism, its potential implementation, communication and design

Ofgem provides no information in their formal consultation as to if and how the future incurrence of currently uncertain SSWC by DNOs between now and the end of RIIO-ED1 will be acknowledged or how eligibility for logging up will be assessed. WPD request that Ofgem set out their intentions for implementation of a logging up mechanism, including how and when this will work.

- 1.1 In the formal consultation section “*Approach to lane rental and logging up*”, Ofgem summarises DNOs’ requests for a logging up mechanism to accommodate uncertain lane rental costs in the remainder of ED1 and also re-states the RIIO-ED1 Strategy Decision with regard to logging up generally:  
  
*“Our RIIO-ED1 Strategy Decision for Uncertainty Mechanisms sets out the position in relation to the logging up of costs. This provides that no logged-up costs will be allowed unless the reopener threshold is triggered. In such conditions, the logged up costs would be assessed on the same cost efficient basis as the May 2019 reopener and require 12 months of cost data to be provided. Only DNOs that pass the materiality threshold for SSWC after our efficiency assessment will qualify to log up further SSWC. All SSWC reopener criteria will need to be triggered for these logged up costs to be considered”<sup>2</sup>.*
- 1.2 However, Ofgem do not definitively confirm whether the RIIO-ED1 Strategy Decision position will be implemented, nor do they make any proposal regarding how such a mechanism could work in practice. It is not clear whether the intention is for it to be for lane rental only or all Specified Street Work Costs (SSWC). It also indicates that some DNOs, if they did not meet the materiality threshold at 31 May 2019, would not be eligible for future logging-up.
- 1.3 Ofgem, in an email to all DNOs on 17 April 2019 communicated “*We understand that issues exist concerning the forecasting of lane rental costs in ED1. We intend to review the information we receive in the submissions and take a view at that time on how to proceed.*” WPD consider that this commitment has not been fulfilled in the formal consultation. It remains unclear how uncertain SSWC will be accounted for, if not via the current reopener, despite this prior commitment to provide transparency upon receipt of submissions from DNOs in May 2019.
- 1.4 Prior to submission, a number of DNOs had raised potential logging-up mechanisms with Ofgem in the context that none currently exist. Prior to publication of the formal consultation on 2 August, Ofgem had made no reference to logging up. Any reference that currently exists in key documents is brief and provides DNOs no further clarity as to how this mechanism should work going forward. The existing guidance gives no assurance to DNOs that a logging up mechanism will be available at the end of ED1.
- 1.5 Key documents/guidance state the following:
  - a. The Licence CRC 3F does not reference logging up.
  - b. The PCFM Financial Handbook refers to the ED1 Strategy Decision: “*If the materiality threshold is not passed the ‘Strategy decision for the RIIO-ED1 electricity distribution price control – Uncertainty mechanisms’ specifies how costs will be treated (eg whether they are subject to the TIM and logging up).*”<sup>3</sup>

<sup>2</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 2.18-2.20

<sup>3</sup> ED1 Price Control Financial Handbook (fast-track licensees), para 7.41

- c. RIIO-ED1 Strategy Decision: *“no logged up costs will be allowed unless the reopener threshold is triggered”<sup>4</sup> and “all street works costs not included in the ex ante allowance or a reopener will be borne by the DNO (subject to the efficiency incentive). This means that they will not be logged up or subject to an ex post review at RIIO-ED2, unless the criteria for the reopener are triggered. The assessment of these costs would then follow the same approach as the reopener.”<sup>5</sup>*

1.6 The RIIO-ED1 Strategy Decision is clearly the indicator for a future logging-up mechanism. However, given the brevity of the reference made (and that nothing is included in the Licence), and given no further clarity has been provided by Ofgem in this consultation, many more questions and issues are raised.

1.7 A full list of questions that WPD consider that Ofgem need to answer as part of their final decision are as follows:

- a. What are the mechanics of logging up in terms of timing and design? How this will follow on from the reopener? How will this work with an ex-post review? When will this happen?
- b. What are the eligible costs for logging up – will it include all SSWC, or just lane rental? WPD request that Ofgem confirm that logged up costs will be allowed as per the commitment set out in the RIIO-ED1 Strategy Decision and that all SSWC components, not just lane rental, will be included in logging up.
- c. Can new costs be claimed for in logging up, i.e costs that DNOs could not quantify at the time of the reopener, because they are still far too uncertain, such as costs arising from the introduction of the DfT driven Street Manager system?
- d. Can additional costs incurred in categories already claimed for in the reopener be included as part of logging-up? This could include permit costs in HAs who have not yet confirmed a permit scheme implementation date with certainty (which Ofgem have excluded from the current assessment) or for permit costs in a HA area where these were greater than forecast in the reopener?
- e. Could a logging up mechanism include SWALES? No claim has been made for this DNO as at May 2019 because permit schemes have not yet been introduced (Street works policy in Wales is devolved from the DfT). However, if future development incurs within the second half of ED1 and a logging-up mechanism is implemented, WPD would assume that this mechanism is also applicable for SWALES. However the wording provided in the consultation, as per paragraph 1.1 above, is ambiguous and could be read as suggesting that only DNOs that triggered in the 2019 reopener will be considered for logging up.
- f. How will DNOs be assessed as eligible for logging up of SSWCs? The RIIO-ED1 Strategy Decision states *“no logged up costs will be allowed unless the reopener threshold is triggered”*, but how will this work in practice? How will this be assessed given the costs sought and awarded in the reopener? Both the following interpretations are plausible: only the logged up costs will be assessed against the reopener threshold; or the logged up costs in combination with any awarded costs at the reopener will be assessed against the reopener threshold (i.e. the total of SSWC in RIIO-ED1). WPD expects that an assessment of materiality in any future logging up mechanism takes account of any claims submitted in the reopener, i.e. that materiality must be assessed in reference to the totality of submitted SSWC in the control.
- g. When will the decision on eligibility of DNOs for logging up take place? In the first circulated version of Ofgem’s calculation file<sup>6</sup> circulated by Ofgem, Ofgem included a view as to whether DNOs’ submitted

<sup>4</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1, para 3.15 ‘Our Decision’ table

<sup>5</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1, para 3.18

<sup>6</sup> File “Specified Street Works Costs reopener quantitative assessment 120819”



costs (as at May 2019) qualify for logging up, simultaneous to the reopener assessment of costs. However, the RIIO-ED1 Strategy Decision does not specify when the assessment should take place. No date or relative assessment window against the pre-determined regulatory timetable is set out. WPD consider an alternative interpretation is equally valid, where Ofgem assess whether DNOs submitted costs qualify for logging up at the point when the logged up costs are submitted<sup>7</sup>. This way, the assessment is based on a higher proportion of actual as opposed to forecast cost data; and the timing of the assessment of whether DNO costs qualify for logging up will be aligned with when the logged up costs are submitted and assessed (not before, as appears to be Ofgem's minded to approach). WPD request that Ofgem confirm that they will assess whether DNOs' submitted costs qualify for logging up at the point when the logged up costs are submitted.

- h. Should (or could) draft allowances resulting from the reopener be postponed for logging up? If DNOs that have provisionally been awarded allowances in the reopener are not allowed to log up future costs or anticipate that future logged up costs will not be material if Ofgem reapply the materiality thresholds set out in the Licence in full to the logged up costs, can the DNO choose not to accept the reopener allowance with written agreement that these be 'rolled-forward' and guaranteed as part of the allowance issued at the point of logging up?

1.8 As paragraph 1.7g sets out, the first circulated version of Ofgem's calculation file issued to DNOs assesses that the future logging up of costs for SWEST is not allowed; however this is not included in the final published version of this file and no mention is provided in Ofgem's formal consultation document. However, the wording provided in the consultation, as per paragraph 1.1 above, is ambiguous and therefore could be read as suggesting that SWEST would not qualify for logging up because they did not "*pass the materiality threshold for SSWC after our efficiency assessment*". In the bilateral meeting held with Ofgem on 2 September, Ofgem confirmed that this was not the case and that SWEST would be eligible for any potential logging up. Again, WPD emphasise that this intention should be clear in their final decision. WPD also raise concern regarding the lack of transparency this demonstrates: an excel file was circulated with an initial view, for it then to transpire that this decision should be overlooked. Had WPD not requested to meet with Ofgem or raised this particular concern with Ofgem at the meeting, a different reading of the series of circulated files and order of events would have been made.

1.9 There is also inconsistency across uncertainty mechanisms in the RIIO-ED1 Strategy Decision:

- a. With regard to Street works, Ofgem sets out "*No logged up costs will be allowed unless the reopener threshold is triggered*"<sup>8</sup>
- b. In contrast, with regard to the Enhanced physical site security reopener, Ofgem sets out that the "*if the materiality threshold is not met we will consider logged up costs...*"<sup>9</sup>

This inconsistency regarding the application of the materiality threshold demonstrates the need for further clarity for how logging up will work in practice.

1.10 WPD emphasise that we agree in principle that a logging up mechanism be implemented by Ofgem. We reiterate our previous offers to work with Ofgem to develop the proposals and the resulting required amendments to the Licence and PCFM financial handbook.

<sup>7</sup> Upon the reasonable assumption that the logging up takes place post the reopener

<sup>8</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms, para 3.18

<sup>9</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms, para 3.33



## Foundation and application of materiality and 12 months of cost data in the proposed decision

**We consider the guidance unclear and that Ofgem's application of the 12 months cost data requirement is a matter of interpretation, which WPD challenges. It also appears that the ordering of the materiality and 12 months assessments have been mixed up.**

- 1.11 Ofgem's minded to position is to not assess two elements of WPD's Street Works reopener claim because 12 months of actual cost data was not provided: all SWEST submitted costs; and all lane rental submitted costs for WMID and EMID: *"As the requirement for 12 months of lane rental costs data is not available, these costs are not eligible for consideration under the reopener"*<sup>10,11</sup>.
- 1.12 However, guidance previously set out on the requirement for 12 months of cost data, and how this interlinks with assessment of the reopener, is extremely limited. Furthermore, no interpretation or discussion of the existence of the 12 months of data clause or its application had previously been provided by Ofgem to WPD in advance of the re-opener submission. In this circumstance, the inference is that Ofgem have been minded to a pre-ordained decision, and to support this decision Ofgem have relied on minor clauses from the guidance with no discussion or awareness raised with the DNOs prior to their proposed decision, whilst overlooking other clauses of guidance often set out in adjacent paragraphs.
- 1.13 WPD are aware of the following areas of guidance only, and no others which expand these brief references:
  - a. The Licence CRC 3F makes no mention and therefore has no requirement for 12 months of cost data<sup>12</sup>; however it does state *"provided the proposed change to the level of allowed expenditure....d) relates to costs incurred or expected to be incurred after 1 April 2015..."*<sup>13</sup>
  - b. The PCFM Financial Handbook sets out that *"the Authority will check whether the licensee has, or will be able to, provide 12 months' worth of cost data to support its proposal"*<sup>14</sup>.
  - c. The RIIO-ED1 Strategy Decision stated: *"we would require at least 12 months of cost data to enable us to benchmark the costs."*<sup>15</sup>
- 1.14 Based on this limited guidance, WPD queries Ofgem's interpretation of this in their proposed decision and thus the impact it has had on their assessment for WPD for the following reasons:
  - a. Ofgem have interpreted the provision of 12 months of cost data in regulatory guidance as the eligibility criteria for the reopener assessment to take place. WPD consider this a misinterpretation. The PCFM Financial Handbook sets out that the requirement to provide 12 months of cost data is an assessment that Ofgem should use to support their determination of whether to confirm, reject or amend the proposed adjustment received from a DNO, i.e. the provision of 12 months of cost data should support

<sup>10</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.10; para.6.21

<sup>11</sup> Whilst Ofgem have not assessed SWEST, WPD assume that Ofgem would have assessed SWEST lane rental costs in the same way as EMID and WMID lane rental costs

<sup>12</sup> WPD (2017) Special Conditions Consolidated: CRC 3F. Arrangements for the recovery of uncertain costs

<sup>13</sup> WPD (2017) Special Conditions Consolidated: CRC 3F. Arrangements for the recovery of uncertain costs para. 3F.8

<sup>14</sup> Ofgem (2014) ED1 Price Control Financial Handbook (fast-track licensees): Section 4 – Methodology for determining relevant adjustments in respect of Specified Street Works Costs, para 7.42

<sup>15</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1 overview paper, para. 3.17

Ofgem's determination of the claim, not inform whether they should consider the claim in the first place. Nowhere in the guidance does it say that 12 months of cost data is a trigger. There is only one eligibility criteria (trigger) for the reopener and that is exceeding the materiality threshold: paragraph 3.17 of the RIIO-ED1 Strategy Decision sets out that, "***The reopener will only be triggered if the additional funding required exceeds the materiality threshold***" [emphasis added]. We would argue that an initial assessment of SWEST should have taken place in Ofgem's modelling and proposed decision.

- 1.15 Ofgem's proposed decision hinges on clauses set out in the PCFM Financial Handbook<sup>16</sup>. The Licence normally takes precedence where there is any inconsistency with the PCFM Financial Handbook<sup>17</sup>. The Licence makes no mention of the 12 month cost data requirement and only refers to "*costs incurred or expected to be incurred after 1 April 2015*"<sup>18</sup>. The eligibility criteria to provide 12 months of cost data for SSWC claims to qualify for assessment in the reopener is not consistent with the precedent set out in the Licence and could therefore be argued to not be valid.
- 1.16 Using the brief guidance in the handbook, WPD also disagrees that we have not provided 12 months of cost data for SWEST. The PCFM Financial Handbook does not specify the nature of the 12 months of cost data to support the proposal, be that actual or forecast data or that the data must be DNO-own data.
- 1.17 In line with the Handbook, we consider that WPD ***has and will be able*** to provide 12 months of cost data to support its proposal for SWEST:
  - a. WPD *has*, as per our reopener submission and RRP submissions, provided 12 months of cost data relating to actual street works activity in the first four years of RIIO-ED1 in SWEST (based on activity in noticing authorities which is considered to be indicative of the level of street works activity once permitting schemes go live).
  - b. WPD has provided for SWEST at least 12 months of *forecast* costs.
  - c. WPD *will be able*, to provide 12 months of actual cost data. WPD will be able to provide 12 months of cost data once permit schemes go live. WPD will be able to fulfil this commitment before the end of RIIO-ED1.
  - d. SWEST has provided 12 months of actual permit costs based on those incurred in WPD's other licensees. We judge this appropriate because WPD works on a standard basis across its licensees and has common operating practices; there is 12 months of actual cost data for permitting authorities in other WPD licensees. Given the non-comparability of HAs across the country (see para 1.20) we judge the provision of 12 months of cost data from a HA in another WPD Licence area to have as much relevance and value as being DNO-specific data.
- 1.18 WPD also disagree with decision to not assess lane rental costs on the basis that we have not provided 12 months of cost data for lane rental for EMID, WMID and SWEST in accordance with the PCFM guidance.
  - a. The PCFM Financial Handbook does not specify that the provision of 12 months of cost data has to relate to any specific component of SSWC. In WPD's SSWC submission we provide street work activity volumes which are currently managed through notice and permitting schemes; when lane rental schemes are roll-out these will supplement permit schemes (which supercede notice schemes). Therefore WPD consider our provision of street work activity levels in each Licence area for lane rental costs to be compliant with the brief guidance in the Handbook.

<sup>16</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 2.5

<sup>17</sup> Paragraph 2.4 of the Financial Handbook states that "*Each methodology is intended to be consistent with the provisions of any CRC to which it refers or relates. However, in the event of any inconsistency between a methodology and a provision set out on the face of a CRC, the provision in the CRC takes precedence*"<sup>17</sup> [emphasis added].

<sup>18</sup> As per footnote 13

- b. The PCFM Financial Handbook does not specify the nature of the 12 months of cost data to support the proposal, be that actual or forecast data. WPD has provided 12 months of forecast lane rental costs for EMID, WMID and SWEST.

- 1.19 Ofgem have assessed the eligibility of all SSWC in the reopener on the provision of 12 months of cost data at the *licensee* level. It should be noted that the application of this assessment in this reopener is inconsistent with the methodology used to assess BPDTs and set ED1 opening allowances. Ofgem included SSWC in ex-ante allowances on the provision of 12 months of cost data at a *Highway Authority* level. This is therefore inconsistent with the approach taken by Ofgem in their proposed decision and provides more ambiguity to the above concerns on whether and how the requirement to provide 12 months of cost data should be interpreted.
- 1.20 Ofgem's application of the 'eligibility criteria' implies that provision of 12 months of cost data relating to a single HA in a DNO area is sufficient for the DNO's submitted SSWC for all HAs in the network to be eligible for assessment in the reopener. This means that if SWEST had had one HA with 12 months actual cost data (out of 10 HAs in the SWEST Licence area), SWEST submitted costs would have been assessed as sufficient for proceeding with review of the claim. However, the cost data associated with the single HA in the DNO has no bearing on the likely level of costs to be incurred associated with the other HAs in the DNO area, any more so than the costs associated with any other HA in the country. The fact that the HAs may geographically be neighbours or near neighbours in the DNO area has no bearing on the likely level of costs to be incurred in the other HAs in the DNO area which are yet to implement a permit (or lane rental) scheme. This is due to the localised and independent nature of permit scheme design and implementation resulting in differences in how permit schemes are operated; neighbouring HAs are no more likely to operate similar permit schemes than HAs operating at opposite ends of the country (as further discussed in chapter 2).
- 1.21 This implies that small differences in the timing of policy implementation across the country (which is outside DNO control) is, in Ofgem's view, a justifiable reason to assess or not assess costs in the May 2019 reopener window, the future incurrence of which is guaranteed<sup>19</sup>. A comparison of Ofgem's relative assessment of NPGN's and SWEST's SSWC reopener submissions further illustrates this point. NPGN's submitted SSWC is for permit schemes in 15 HA areas that reside in NPGN's network and is supported by forecast data only for the majority of the schemes given that these schemes are not yet operational. NPGN evidence that only two out of the 15 HAs have operational permit schemes at the time of submission; one of the schemes of which NPGN has at most provided 14 months of actual cost data<sup>20</sup>. NPGN's data provision for permit fees is deemed sufficient by Ofgem to warrant inclusion in the reopener assessment, whilst in contrast Ofgem exclude SWEST from the reopener. Given that such timing differences in the roll-out of permit schemes are outside of DNO management control, we consider this to be unfair treatment towards SWEST.
- 1.22 Therefore to not assess SWEST claim on the basis of not being able to provide 12 months' worth of cost data for one qualifying HA in the SWEST is illogical and overlooks the policy environment, as any other scheme in the country would have been as representative of the SWEST in general as that one HA. WPD's approach to using experience from other DNOs in our Licence areas therefore appears valid and logical.
- 1.23 In light of these arguments, WPD conclude that our SWEST submitted costs and our EMID, WMID and SWEST lane rental costs are valid and compliant with the limited regulatory guidance that exists and would request that such costs are assessed and fully considered as part of the re-opener.

<sup>19</sup> Permit schemes will be implemented by all HAs, as discussed in para 2.4

<sup>20</sup> File "Specified Street Works Costs reopener quantitative assessment 150819 for publication", tab "NPG"

## Regulatory Process Precedence

**We consider that Ofgem's position overlooks precedence and past commitments.**

### Precedence of ED1 allowance setting

- 1.24 Ofgem's RIIO-ED1 minded to methodology does not take account of the approach used to assess SSWC at ED1 and which informed opening allowances for slow tracked companies. In particular, with regard to permit condition costs Ofgem assessed: *"We accept that permit condition costs are bespoke to each local authority or highway authority and therefore need to be justified on a case-by-case basis. In reviewing further evidence, we are satisfied that the majority of permit condition costs are justified. However, we note the volatility of these costs and we feel it is sensible to allow the lower of the DNO's DPCR5 or RIIO-ED1 (where unit cost is the condition cost per permit). This approach accepts that each DNO may incur different costs due to different conditions imposed on them but also recognises that its [an] area that is difficult to benchmark and data is volatile"<sup>21</sup> (emphasis added).*
- 1.25 On this basis WPD consider this sets precedence for:
- Acknowledging that each HA operates differently with regard to the imposition of conditions and hence differences in DNO's submitted condition costs (see paragraph 1.34 and also paragraphs 3.6 to 3.8); an assessment WPD considers equally valid for permit schemes in general.
  - Acknowledges that data is volatile, i.e. that year on year movements are accepted. This further supports why WPD's data should be included in Ofgem's unit cost benchmark (see paragraphs 3.5 to 3.24), especially with regard to permit condition costs.
  - Acknowledges that this is an area difficult to benchmark given the above non-comparability; an assessment WPD considers equally valid for permit schemes in general; and hence supports WPD request that Ofgem consider supplementing the quantitative benchmarking assessment with a more bespoke review of DNOs' claims on a case by case basis (see also paragraph 1.27a).
- 1.26 During our bilateral meeting with Ofgem on 2<sup>nd</sup> September 2019 it was suggested by Ofgem that the precedence of this RIIO-ED1 process was no longer relevant on the basis that at the time Ofgem had insufficient data to benchmark. WPD consider this poor justification for overlooking past precedence given that permit schemes are still in their infancy in many HAs, there is variation in the imposition of conditions by HAs and that data volatility with regard to condition costs remain observable characteristics of the street works policy landscape and of the submitted condition cost data, respectively, five years on from the slow track Final Determination assessment.

### Precedence of RIIO-GD1 reopener assessment 2018

- 1.27 Ofgem's RIIO-ED1 minded to methodology appears to cherry pick precedence set out in their assessment of Cadent's SSWC in the RIIO-GD1 reopener. Cadent's claim was submitted in May 2018 with Ofgem's decision published in September 2018. The key components of the assessment were:
- Case by case, component by component assessment methodology** - Ofgem accepted Cadent's forecast methodology, did not benchmark Cadent's submission and did not develop an independent view. Ofgem did not for example, develop their own view of the 'reasonableness' of Cadent's submitted volumes. Ofgem's assessment of Cadent's claim was based on a component by component assessment of Cadent's submitted forecast methodology and hence submitted costs - a qualitative and quantitative assessment combined. Ofgem accepted Cadent's method.

<sup>21</sup> Ofgem (2014) RIIO-ED1 Slow Track Final Determination: Business Plan expenditure assessment, para. 10.45

It is not apparent that Ofgem have considered DNO's forecasting methodology in the RIIO-ED1 control, only the resulting derived costs.

WPD consider that Ofgem should assess submissions on case by case basis, consistent with RIIO-GD1, supplementing quantitative and qualitative assessments (see also paragraph 3.45 to 3.49).

- b. **Unit costs** – Ofgem accepted Cadent's unit cost per permit *"around £58/unit (nominal prices) since the start of RIIO-GD1"*<sup>22</sup> Ofgem need to consider the precedence of RIIO-GD1 allowed unit costs (permit fees, admin and condition costs) in the RIIO-ED1 reopener.

Ofgem comment that *"Having assessed Cadent's methodologies for forecasting the number of permits, the overall costs and the assumptions used, we are satisfied that these are broadly reasonable."*<sup>23</sup> No comment is made by Ofgem with regard to Cadent's average permit fee cost in either publication of their minded-to position or their final decision.

Ofgem allowed Cadent £4.9m of the £5.0m claimed for permit fees<sup>24</sup>.

WPD request that that the precedence of the unit cost allowed for Cadent by Ofgem in the RIIO-GD1 reopener be allowed at minimum by Ofgem in their assessment of SSWC in RIIO-ED1. This means that Ofgem should allow the permit fee costs as submitted, reflecting that they are beyond DNO control to influence and given the guidance that the reopener must protect against the fees levied (see paragraph 3.37).

- c. **Permit variation volumes and fee costs** – Cadent's permit fee unit forecast methodology calculated as *"an average of permit fees, application fees and variation fees"*<sup>25</sup> was accepted by Ofgem<sup>26</sup>. However, for ED Ofgem propose to disallow permit funding for permit variations; on the basis of precedence and consistency across price controls, WPD argue that Ofgem should therefore allow the permit variation claims in ED1 reopener assessment.
- d. **Efficiency challenge** – In Ofgem's assessment of Cadent's claim a three per cent efficiency challenge was applied to permit admin costs only<sup>27</sup>. In contrast, Ofgem applied a three per cent efficiency challenge to all costs in ED1 reopener.

This is inconsistent and also misleading given Ofgem explicitly set out in the formal consultation that *"this approach is consistent with the approach we took in regards to RIIO-GD1 SSWC reopeners in 2018"*<sup>28</sup>. WPD request that the same efficiency challenge is applied to ED as per the actual precedence from GD.

Note that WPD also challenge the three per cent efficiency challenge across all permit costs for other reasons; this is further in Section 3.

#### Prior commitments in the RIIO-ED1 Strategy Decision

- 1.28 The RIIO-ED1 Strategy Decision sets out that Ofgem's approach to the reopener assessment of permit fees *"may be mechanistic"* and *"any one-off set up costs, additional administration costs and the impact of any permit*

<sup>22</sup> RIIO-GD1 Reopener Consultation – Specified Street Works Costs, para. 2.4

<sup>23</sup> RIIO-GD1 Reopener Consultation – Specified Street Works Costs, para. 2.12

<sup>24</sup> RIIO-GD1: Our decision on Cadent Gas Limited's application under the Specified Street Works Costs reopener, Table 1

<sup>25</sup> Cadent (May 2018) East of England Uncertainty Mechanism Claim, p. 15, footnote 14

<sup>26</sup> *"Having assessed Cadent's methodologies for forecasting the number of permits, the overall costs and the assumptions used, we are satisfied that these are broadly reasonable."* Ofgem (RIIO-GD1 Reopener Consultation – Specified Street Works Costs, para. 2.12)

<sup>27</sup> RIIO-GD1 Reopener Consultation – Specified Street Works Costs, para. 2.26

<sup>28</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para 2.12



*conditions will be more comparative in nature. We intend to benchmark these costs against those submitted by other network companies at the time of the reopener, those previously assessed in electricity distribution and those from other industries (eg gas distribution)*<sup>29</sup>.

- 1.29 Ofgem have not benchmarked costs against those from other industries such as gas distribution. WPD request that Ofgem make comparison to the unit cost allowances that Ofgem granted to Cadent in their assessment of the RIIO-GD1 SSWC reopener (see paragraph 1.27b). These are precedent setting for the RIIO-ED1 control and should not be overlooked, especially given how relevant the assessment is in terms of timeliness and scope (GD1 allowances were granted in September 2018).
- 1.30 In the RIIO-ED1 Strategy Decision, Ofgem specifically do not include permit fee costs into the same benchmarking method of assessment in the reopener as one-off set up costs, administration and condition costs. Ofgem have however assessed permit fee costs in a benchmarking method consistent with their treatment of other SSWC components. The Strategy Decision recommends a more mechanistic approach, which whilst open to interpretation, suggests a more by-part assessment.
- 1.31 WPD request that Ofgem reconsider the full suite of precedence and commitments relating to ED1 SSWC and reassess DNOs' claims with these in mind. Clear and transparent explanations should also be provided where precedent steps and commitments have been rejected in this assessment

## Poor transparency and lack of guidance in the process

Despite early efforts of engagement between WPD and Ofgem, the SSWC reopener has been subject to poor transparency and unclear guidance through the process.

The requirement for 12 months of actual cost data was never discussed prior to the issue of Ofgem's proposed decision on 2 August 2019.

Lack of guidance means that permit administration and condition costs have been reported and forecast differently across DNOs, with no follow up SQs to help explore these differences. No visible normalisation adjustments appear to have been applied in Ofgem's benchmarking.

RRP tables (which could have been requested upfront) were requested late in process but ahead of previously agreed timescales (the RRP submission date of 31 July). RRP submissions, which are subject to the RIGs, will also have been prepared on a different basis to the reopener data, but these differences have not acknowledged in this consultation.

Poor communication has also been apparent regarding changes Ofgem made to their published proposed decision with regard to WPD's licensees in particular. These were not communicated to WPD or properly reflected in Ofgem's communications library.

Poor transparency and guidance, with their subsequent impacts on this assessment process, sends a message to the industry and investors about regulatory certainty going into RIIO-2.

- 1.32 Prior to the SSWC submission at 31<sup>st</sup> May 2019, WPD had clearly communicated to Ofgem that no permit schemes were operational in SWEST and that no lane rental costs had yet been incurred in EMID, WMID or SWEST<sup>30</sup>. Despite Ofgem's written acknowledgement of delays in the roll-out of permit schemes and the

<sup>29</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1 overview paper, para 3.20, 3.21

<sup>30</sup> WPD (2019) WPD presentation at Ofgem-WPD reopener bilateral meeting, 19 March 2019



uncertainty of lane rental costs after this meeting (in an email sent by Ofgem on 8 April 2019), Ofgem did not at any time communicate the requirement to provide 12 months of actual costs data, prior to publication of their proposed decision. As this is a key component of the evaluation of DNO claims for SSWC, it is disappointing that this interpretation was not flagged earlier by Ofgem. Had there been opportunity for DNOs to discuss the application of the 12 months cost data guidance with Ofgem prior to submission, this could have avoided unnecessary work and more time to consider other parts of this reopener and develop a logging up methodology.

- 1.33 Through the process, there has been a lack of guidance provided by Ofgem in preparing the submissions (more guidance could have aided consistency across DNO submissions) and also a lack of follow up SQs to allow us to further explain and justify costs compared. Ofgem are then trying to make a like-for-like comparison when the submissions have been prepared differently across DNOs. Data templates only came after formal submission; setting expectations on how Ofgem wished to receive information would have been helpful earlier in process. Indeed CA's suggestion that *"the disparity of costs claimed by energy networks....indicate that the approach to claiming these costs is not standardised"*<sup>31</sup> reflects a third party's view of the absence of regulatory steer on the requirements for this submission.
- 1.34 Annex 2 summarises the different administration and condition costs referred to and submitted by DNOs. WPD raise the following observations:
- a. DNOs have included differing numbers of administration costs at a sub-component level. For example, ENWL include two such costs compared to WPD's inclusion of five.
  - b. DNOs have included differing types of administration costs. For example, ENWL have included the cost of processing the payment of associated penalties, where no other DNO has.
  - c. DNOs have included differing numbers of condition costs. For example, NPG included two compared to SPMW inclusion of 11.
  - d. DNOs have included differing types of condition costs. For example, SPMW has included condition *"NCT7a – high street closure, access maintained"*, where no other DNO has.
  - e. DNOs have allocated costs differently across the administration/condition boundary. For example, UKPN has included the preparation and submission of traffic management plans as a condition cost, whereas WPD has included it as an administration cost. ENWL appear to refer to traffic management plans both as an admin and condition cost, referring to both the *"Requirement to submit a Traffic Management Plan to support a permit application for certain types of work"* in their permit administration commentary and in the list of permit conditions. It is not clear where this cost has been reported.
- 1.35 These observations demonstrate the non-comparability of DNOs administration and condition cost submissions and therefore the inappropriateness of benchmarking these costs (see paragraph 3.42 to 3.44) without due consideration of their constituents or differences. It is not apparent from Ofgem's calculation file or written consultation that any normalisations or adjustments to DNOs submitted data have been undertaken to ensure comparison on a like-for-like basis. This not only demonstrates the inappropriateness of benchmarking but the invalidity of the unit costs implied. WPD would have expected Ofgem to highlight these differences in their consultation and set out how they have been accounted for; this is not clear. WPD request that further information be provided in the final decision. Greater comparability of data would have been possible if greater clarity of reopener expectations concerning data was set out upfront.
- 1.36 A late request was made for the RRP tables M9a-c, as part of a SQ issued to WPD on 13 June 2019, with a submission date of 20 June. Ofgem had not previously signalled that Street works RRP tables would be required

<sup>31</sup> Citizens Advice response to Informal consultation on RIIO-ED1 price control reopeners (May 2019)

to inform their reopener assessment. WPD's internal timetables for the completion and data assurance of these tables was working towards the RRP submission date of 31 July 2019 and a one week response date was neither feasible, or in the interests of data assurance, desirable. If Ofgem had set out this requirement in a more timely manner, this could have been built into the timetable and provided promptly. WPD accelerated their completion of these tables and submitted these to Ofgem on 1 July. As part of this early submission, we highlighted that there are known differences between the data submitted in the RRP packs and the re-opener submission and recommended a review of the RIGs relating to Street Works. In Ofgem's proposed decision, it is disappointing to note that they have included RRP reporting as part of their benchmarking analysis and also made no reference to any potential issues with using both RRP and re-opener submission data for the same purpose. In our bilateral meeting on 2 September, however, Ofgem acknowledged that a review of RIGs for Street works is required. WPD look forward to playing a key role in this review as part of the RIGs working group. However, we would recommend that Ofgem acknowledges and considers these differences in their reopener decision following the receipt of consultation responses. With this regard, WPD's view as set out in paragraph 3.26 to 3.30 is that the RRP data should not form part of Ofgem's reopener quantitative assessment. For future such submissions, we would also urge Ofgem to provide proper and upfront notification of such requirements.

- 1.37 Another example of where greater transparency in process in terms of setting data expectations would have been useful was the SQ sent to DNOs to request the mapping of HA areas by Licence area in percentage terms. The template provided initially had little guidance and needed to be re-issued and still remained fairly ill-defined. In Ofgem's proposed modelling they have used the data provided, but it is not clear how they have dealt with the data provided, for example where percentages submitted by different DNOs did not add to 100, how did Ofgem manage the data? This concern is further explored in paragraph 3.60.
- 1.38 Poor communications and poor transparency / auditability of draft allowances have been apparent through the process. Ofgem put an update on their website on 6<sup>th</sup> August with no notification to stakeholders of a change in what was being consulted on; in particular a change to WMID and EMID proposed assessments. There was no update on the Ofgem publication library and the date on publication also remained unchanged, as did the version numbering, which is poor practice in the interests of transparency and auditability. Had it not been for a chance revisit by WPD to the formal consultation webpage, this non-publicised update may have gone unnoticed by stakeholders for a greater passage of time.
- 1.39 Due to the importance of benchmarking in Ofgem's proposed decision, it is also unclear why Ofgem couldn't have published the modelling files upfront with the original consultation. Expectations are set that DNOs must be transparent and provide robust justification for their submissions and it is disappointing that this seems to be a one-way operation. Ofgem could have asked DNOs for permission to share earlier, which would have enabled sharing of calculation files at same time as publication of the consultation, instead of an after-thought and only when requested by DNOs.
- 1.40 Ofgem states that "*The RIIO model provides clear, up front rules and principles to ensure that network expenditure can be effectively financed*"<sup>32</sup>. WPD would argue that the rules are not clear and were not clear before the submission of the claims. These are costs that DNOs will incur and currently the mechanism gives WPD and its investors no assurance that there will be sufficient recompense for these costs. The processes followed in this reopener also provides no reassurance that proposed uncertainty mechanisms can be relied upon in RIIO-ED2 and that companies should accept these proposals in lieu of ex-ante allowances. This increases risks for investors, with subsequent potential impacts on key parameters such as cost of equity.

<sup>32</sup> Ofgem (2017) Guide to the RIIO-ED1 electricity distribution price control, para 13.2

## 2 POLICY AND ITS APPLICATION

WPD consider that Ofgem's minded to approach does not recognise the full extent of street work policy uncertainties. Ofgem's presented snap shot assessment does not account for dynamic changes in policy happening now and those expected before the end of ED1. The approach appears over-simplified and WPD considers that greater tailoring is required to reflect the localised application of policy.

Ofgem needs to clarify how they intend to accommodate these uncertainties.

### An uncertainty mechanism in name but not in practice

Uncertainty in some forecast costs and ongoing developments in policy have not been acknowledged in Ofgem's proposed decision and no assurances have been provided to uphold the principles of the uncertainty mechanism.

- 2.1 Uncertainty mechanisms are, by definition, designed to acknowledge the incurrence of costs where forecasting was difficult, or uncertain costs at the point of business planning and/or the setting of price control opening allowances. They provide a mechanism for the most timely assessment of costs when more certainty exists. This means that uncertainty and difficulty in forecasting in that activity area was an accepted principle before the start of the price control period.
- 2.2 In the case of the SSWC reopener mechanism the original assumption was that developments would be further forward by May 2019 than what they currently are, hence the appropriateness of a window to allow DNOs to claim additional costs at this time. However, by scheduling a window half way through the RIIO-ED1 price control period, the inference is that the reopener was always meant to be both forward and backward looking.
- 2.3 In previous discussions and communications, Ofgem have acknowledged that current SSWC being incurred by DNOs are not all certain at time of this reopener, but in the proposed decision, any flexibility in approach, as previously communicated, is minimal, with no uncertain costs (such as lane rental) included in the proposed award and no discussion or assurance to DNOs on how any future uncertain costs (which DNOs are certain to incur) can be 'logged-up'. There is a significant risk to some DNOs that they will not be able to recover material street work costs in RIIO-ED1. An effective uncertainty mechanism should be designed to mitigate this risk. Despite this being an uncertainty mechanism, any assessment of the uncertainty and allowance for future uncertain costs has been avoided.
- 2.4 As WPD have set out in our 31<sup>st</sup> May 2019 submission and other correspondence with Ofgem, we acknowledge that the exact timing of permit scheme roll-out is uncertain for some HAs. Nonetheless, roll-out will happen and is currently dynamic, with HAs quickly issuing consultations and implementing schemes. This has been driven by Secretary of State for Transport communications instructing all HAs not currently operating a scheme to do so by March 2019. This date has now passed. In this context HAs are quickly seeking to respond to central government direction. It is very much likely that new schemes will be implemented and soon (especially to tie in with Street Manager system implementation – see paragraph 2.15).  
[REDACTED]  
[REDACTED]  
[REDACTED] Despite this, Ofgem have removed HAs from WPD's assessment, where there is some uncertainty of the date of implementation. This is despite clear policy instructions from the Secretary of State for Transport that schemes will need to be imminent<sup>33</sup>. In this context, whilst WPD could not give certainty at May 2019, it was clear that it

<sup>33</sup> This letter from the Secretary of State was reproduced in WPD's May 2019 submission, appendix 10

would not be long before a number of schemes made formal announcements that would propose the start of permit schemes by early 2020. Further evidence was also supplied to this effect through the SQ process. The proposed decision to remove these HAs in totality from the assessment therefore includes a lack of accommodation for uncertainty, despite this being the underlying principle. Annex 5 of this submission provides further evidence (which has become available since May 2019) that more schemes are now imminent.

- 2.5 As detailed in section 1 above, this consultation also does not include a clear proposal for accounting for lane rental costs, despite Ofgem's prior acknowledgement that these costs will happen and could be significant: *"The expected uptake in permit schemes in the coming year is also likely to result in an increase in lane rental schemes being rolled out by local authorities, the costs associated with which are currently uncertain (but could be significant)."*<sup>34</sup> We reiterate that assurance needs to be provided to DNOs in Ofgem's final decision if the principles of the uncertainty mechanism are to be upheld.

### Localised application of DfT legislated street works policy

**Highway Authorities operate differently across England. This has not been acknowledged and a benchmarking methodology has been developed and applied which does not appear to take account of any of these differences.**

- 2.6 Although street works policy is centrally directed (as referenced above through Secretary of State pronouncements), the application of this policy is implemented locally, which can be on an individual HA basis.
- 2.7 As set out in our original submission and reiterated in subsequent correspondence, this means that HAs across the country and across DNO Licence areas operate in materially different ways. This can have impacts on many aspects of permit schemes and their associated operation and costs, including the timing of roll-out of schemes, the fee structure, applicable roads for permits and the permit conditions imposed.
- 2.8 Inevitably this means that Ofgem's minded-to assessment, which uses a benchmarking methodology (with no apparent normalisation or adjustments), is not comparing like-for-like between different HAs and DNOs. The non-appropriateness of quantitative benchmarking is further discussed in paragraph 3.45 to 3.49.
- 2.9 HAs can be organised and operate very differently, which means that disparities in permit schemes are seen across the country. Two examples of HA groups which are organised on a different basis to any HAs that operate in WPD's Licence areas are as follows:
- a. The Greater Manchester Road Activities Permit Scheme (GMRAPS) was created as a Joint Permit Scheme with 10 participating Highway Authorities. The scheme has a central point for all permit applications, and a single permit fee matrix common to all members, therefore creating a consistent approach and standardised permit fees. This operating model was developed in 2013, but since then legislation has changed to remove the ability for Joint Schemes (so new permit schemes adopted past this time cannot follow the same approach and be party to the same efficiencies). GMRAPS, however, continues to operate as a joint scheme. The benefits are standardised permit fees, and a standard approach to process and use of conditions. This reduces to some extent the complexity of complying with permit schemes in that DNO Licence area and potentially increase efficiency savings. Permit fees may also be lower than if they were run independently, as some scheme running costs can be shared.
  - b. The London Permit Scheme (LoPS) is a Common Permit Scheme, but one which has endeavoured to provide a level of consistency around process and application of permit conditions with some degree of success. The LoPs Permit Advice Notes have been used as a basis for national good practice notes

<sup>34</sup> E-mail sent from Ofgem to WPD, 8 April 2019

which have been incorporated into the National Permit Guidance document issued by HAUC (England) in 2017. This consistency and good practice will aid the efficiency of utilities' working practices in this area.

- 2.10 WPD's footprint includes a number of schemes that have a Common Permit Scheme, in that they share a common Permit Scheme Document, but with their own Council Order. Unlike the GMRAPS scheme however, each HA will set their own permit fees, will administer the permit scheme as they see fit, and will all use different EToN systems, so this reduces any potential benefit for WPD. We also have a number of HAs that have their own individual Permit Schemes, with their own Council Order, permit fee matrix and administration policy and each with their own EToN system.
- 2.11 Therefore, each Permit Authority in WPD's Licence areas has a different permit fee matrix, differences in processes, and differences in approach to use of conditions and differing views on what constitutes compliance. This results in complexity in providing significant efficiency improvements whilst maintaining compliance levels across a diverse range of approaches.
- 2.12 As a very minimum, where each HA has its own permit fee matrix, the level of permit fees allowed by Ofgem in its decision should reflect this policy landscape and should not be subject to benchmarking. HAs can set their own permit fees (subject to a maximum allowed) based on the recovery of efficient costs of scheme operation as justified by individual cost benefit analysis. As detailed in WPD's 31 May submission, we can influence this only so far as responding to consultations and challenging where appropriate<sup>35</sup>. We cannot reduce permit fees below implemented levels, in the same way that householders cannot reduce their council tax bills to levels that may be charged by other councils in the country.
- 2.13 In this context, WPD request that the three per cent efficiency challenge on permit fees is also removed. As stated above, DNOs cannot influence the permit fees charged by HAs and so an efficiency challenge on these costs is inappropriate.

## **Future policy developments in the remainder of RIIO-ED1**

**Key policy developments are certain in the remainder of RIIO-ED1, most notably the introduction of Street Manager. There is no recognition of these developments in the proposed decision.**

**There is also no consideration of potential future developments in the different policy environments for Wales and Scotland and how these could be accommodated in any future logging up mechanisms.**

**WPD request assurance from Ofgem that future policy developments, which may have a material cost impact, could form part of any logging up process at the end of ED1.**

- 2.14 Ofgem's assessment of future incurrence of SSWC does not recognise wider policy developments. This further demonstrates a lack of alignment between policy and process with regard to Ofgem's assessment. Ofgem do not discuss wider street works policy in their consultation and so there is no assurance that any further costs incurred by these developments (which are beyond management control) may form part of any logging up mechanism in future.
- 2.15 As discussed in WPD's 31 May submission<sup>36</sup>, the Department for Transport are currently consulting on a number of proposals to support the introduction of a new street works notification IT system – Street Manager – which will replace the existing EToN Technical Specification and the EToN software systems provided by a number

<sup>35</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 3.3.1.2

<sup>36</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 5.1.4



of third party developers<sup>37</sup>. It is understood the new system will come into effect in the 2019/20 regulatory year<sup>38</sup> and will therefore have cost impacts for WPD in the remainder of the ED1 price control period. These impacts are still unknown, as development is still ongoing on an agile basis by the DfT, and thus no costs were included within WPD's claim.

2.16 Future cost impacts could include:

- a. Expected incurrence of one-off set-up costs related to the implementation of a new IT system in WPD and training costs associated with operating a new system.
- b. Ongoing fees charged by DfT for its use (not the same as permit fees charged by HAs, but similar principle of fees levied for service, which is beyond our control).
- c. Ongoing changes to permit conditions making them more demanding and introduction of new permit conditions, with a subsequent impact on costs. The DfT are specifically proposing changes to two permit conditions as part of the Street Manager Consultation; of particular concern is a condition that a utility must gain consent from the Authority before installing new apparatus in the carriageway (road). As with existing permit conditions, there will be both a knowledge gap around the purpose of the conditions as well as interpretation issues as to when they are appropriate to be used.
- d. Impact of additional administrative costs in WPD to include: increased IT maintenance system costs; notification changes; and a potential increase in fixed penalty notices during the familiarisation period of new legislation whilst interpretation and understanding becomes agreed.

2.17 In the May 2019 reopener window, SPMW were the only DNO to include costs associated with the DfT's Street Manager in their SSWC submission and they requested these as part of "one-off set up costs". Ofgem in their formal consultation *"are minded to reject these costs as a system refresh does not come under the definition of Streetworks"*<sup>39</sup> as set out in the RIGs.

2.18 In the light of this decision and the precedent that it may set for future costs associated with the introduction of Street Manager, WPD request that Ofgem provide clarity on their assessment of the introduction of this new system (outside the control of a DNO) as a "system refresh" and provide due assurance within their final decision that such future costs in all DNOs could form part of any future logging up mechanism and would not be rejected from any assessment. These system development costs would not be incurred if it were not for the DfT proposed system.

2.19 Since the 31 May submission, WPD also highlight to Ofgem that the DfT have issued revised guidance on lane rentals<sup>40</sup>. Although there has been only one change (relating to Application of Revenue), it is a significant change (but not one that was subject to a consultation that we could respond to). This change involves a change in policy by the DfT regarding the application of surplus revenue from Lane Rental schemes that now allows the funding to be used for highway maintenance activities (rather than being ring-fenced for innovation as is the case at present). This may add impetus to the uptake of lane rental schemes by HAs, as there is now an opportunity for HAs to supplement highway maintenance budgets in the included circumstance. WPD consider that this change is another example of how any decision from Ofgem needs to be flexible to ensure it is clear how all DNOs can recover future costs that are still uncertain in an ever-changing policy environment.

2.20 At the time of this reopener, whilst there are some relatively minor differences in legislation, there is a high level of compatibility across legislation, systems, processes and interpretation that supports cross-border working

<sup>37</sup> The full consultation document can be accessed at: DfT (2019) [Street and road works: Street Manager and updates to permit schemes](#)

<sup>38</sup> DfT are currently consulting on start dates of either 1 Jan, 1 Mar or 31 Mar 2020

<sup>39</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para 4.13

<sup>40</sup> Lane Rental Schemes: Guidance for English Local Highway Authorities, re-issued July 2019



across England and Wales. Our main border authorities, Herefordshire and Gloucestershire, have not yet moved to permits. After April 2020, when it is firmly expected that permits and Street Manager are rolled out across England, this will impact on our flexibility to work across England and Wales given the differing legislation and systems. We need to prepare for change in England, whilst maintaining the status quo in Wales, which provides challenges for our necessary system development. The Welsh Government are currently considering whether to move to Street Manager in the future, or whether to take a different option. A point to note is that when system emergencies occur and we redeploy resources within our own footprint, or even to support other DNOs, we must comply with all legislative requirements, and as differences become significant it can provide additional challenges to DNO workforces when working in unfamiliar areas.

### 3 OFGEM'S QUANTITATIVE ASSESSMENT

#### Unit Cost Benchmarking, without the necessary adjustments or normalisations

Ofgem excludes WPD from the benchmark on the basis that year on year fluctuations in our submitted data are observed. WPD consider that our removal is unreasonable and unjustified; year on year movements in costs is an expected feature of the policy environment.

WPD has a number of concerns with Ofgem's unit cost benchmarking, from a mathematical, policy and precedence perspective. Unit costs are derived with little reference to their source and as such cannot be interpreted. An over-simplified view of unit costs has been developed.

For permit fee unit costs, Ofgem takes no account of the different permit fees charged within and across HAs or indeed the volume of street work activity that different DNOs undertake on roads upon which the different fees are levied. Furthermore, Ofgem's developed permit fee unit costs overlooks that DNOs cannot influence HAs to charge a permit fee consistent with the benchmark.

Ofgem have excluded permit variation volumes from their assessment whilst have retained permit variation costs leading to a misaligned assessment and ultimately draft allowances that do not make sense.

The derived condition and administration unit costs appear to take no account of different reporting approaches by DNOs; and Ofgem appears to overlook the precedent set by the unit costs allowed for in the RIIO-GD1 control which was decided upon less than one year ago (September 2018). There is an apparent lack of normalisations or adjustments undertaken by Ofgem to the data received from DNOs and no assessment is provided as to their own-confidence in the results.

Overall, WPD consider a more sophisticated and transparent approach is required ahead of Ofgem's final decision. A revised approach should take account of the policy environment, the full suite of guidance governing the reopener methodology, regulatory process precedence and differences in DNO approaches to the submission.

- 3.1 Ofgem's calculation files<sup>41</sup> set out their methodology in developing a view of unit costs by SSWC component; permit fees, admin costs and condition costs<sup>42</sup>. This quantitative method is summarised below.
- 3.2 Ofgem's view of unit costs is developed by taking the average of two separately identified views of unit costs derived from two sources of DNO submitted data (RRP and reopener submission). Both approaches are developed based on ED1 to date data. Two different approaches are used:
  - a. Unit cost calculation using RRP data: Ofgem calculates a unit cost for each year 2015/16 to 2018/19; then takes the average across the four years
  - b. Unit cost calculation using reopener data: Ofgem sums costs across years 2015/16 to 2018/19, sums volumes across corresponding years, then divides summed costs by summed volumes.

Both approaches are informed by data provided by ENWL, SPMW and UKPN only.

Ofgem have used the same unit cost (per component) to inform their view of each year of the control, with the exception of applying a three per cent efficiency challenge to unit costs in the forecast years.

<sup>41</sup> File "Specified Street Works Costs reopener quantitative assessment 150819 for publication"

<sup>42</sup> Ofgem do not quantitatively assess DNOs' submitted lane rental costs

Ofgem later aggregates these into a single permit unit cost (i.e. summing the permit fee unit cost, the permit admin unit cost and the permit condition unit cost).

- 3.3 Ofgem also develop two other views of permit costs, both based on the reopener data. One is for the forecast period based on DNO submitted data for 2019/20 to 2022/23 and one is for the full ED1 price control period. Both views use the same smoothed average approach as described in paragraph 3.2b.
- 3.4 WPD has concerns with the unit cost benchmarking methodology that Ofgem have applied in their proposed decision (as summarised above). These are discussed in the following sections.

### **Methodological Concerns (relevant to all unit costs (fees, administration and condition)):**

#### Exclusion of WPD from the benchmark

- 3.5 Ofgem excludes WPD from the benchmark. Only data provided by ENWL, SPMW and UKPN have been used to inform the benchmark unit costs for Ofgem's assessment of permit fee, condition and admin costs.
- 3.6 In the consultation, Ofgem justify WPD's exclusion on the basis that they "*identified values where there were inconsistencies (e.g. significant fluctuations in unit costs between years)*"<sup>43</sup>. An assessment to similar effect is also reached by Ofgem later in their consultation with regard to condition costs that "*WMID's proposed condition costs are considerably higher when compared with other DNOs*" and that "*WMID's submission does not demonstrate any justification for these higher costs*"<sup>44</sup>. The same assessment is reached for EMID<sup>45</sup>. And also with regard to administration costs, that "*WMIDs [admin] costs are comparatively higher than other DNOs*" and that "*WMID's submission does not evidence any operational efficiencies, improved ways of working and innovative solutions that have a direct impact on reducing these costs over the ED1 price control period*"<sup>46</sup>. The same assessment is reached for EMID<sup>47</sup>.
- 3.7 WPD met with Ofgem on 2 September 2019 to discuss matters relating to the SSWC RIIO-ED1 reopener. It was discussed why Ofgem excluded WPD's data from the minded to unit cost benchmarks and the need for WPD to justify why our costs are above the benchmark. Condition costs in particular were discussed.
- 3.8 WPD consider that our original submission clearly sets out why our inter WPD-licensee DNO condition costs differ and why movements in unit cost data is apparent between years. We include some references to this submission as follows:
- 3.9 [REDACTED]
- [REDACTED] This demonstrates that the conditions imposed differ HA to HA and therefore DNO to DNO, including within DNO groups.
- 3.10 For condition Consultation & Publicity (NCT11A), section 3.3.1.3.2<sup>49</sup> sets out why our additional staffing requirements have fallen as ED1 has progressed due to effective engagement with HAs to simplify the visible display of length permit numbers at the site of the street work activity.

<sup>43</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 2.9

<sup>44</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.13

<sup>45</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.25

<sup>46</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.11

<sup>47</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.23

<sup>48</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 24

<sup>49</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 25

- 3.11 Section 3.3.1.3.4<sup>50</sup> sets out with regard to the Materials & Plant Storage (NCT04A) condition why our WMID submitted condition costs are higher than for EMID and the positive impact our proactive HA engagement has had to reduce these costs. *“WPD has been working with the permitting authorities in WMID to encourage more use of the national permit guidance and reduce the use of this condition. Through this work, fewer daily spoil collections have been applied in conditions in 2018/19”<sup>51</sup>.*
- 3.12 Ofgem set out in our meeting of 2 September 2019 that they would be open to receipt of further information. Therefore as part of this consultation response, WPD has provided further information to supplement our submission.
- 3.13 Annex 3 provides a view of the frequency with which each HA imposes each condition, as a proportion of the permits granted by the respective HA. This demonstrates how each HA has a focus on different requirements and how different HAs make more or less use of conditions in their granting of permits. Provision of this additional information seeks to substantiate why WPD observe differences in condition costs across our DNOs and that this is ultimately driven by differences in the implementation of permit schemes by the respective HAs that reside in our DNOs. WPD considers provision of this information builds upon our previous submission that *“through the National Permit Forum, where permit conditions are used inconsistently or excessively, these issues are raised and discussed by the committee with a request to the DfT to provide guidance. Examples of where this has happened for specific conditions include use of the condition for Manual Control of Portable Traffic Signals and clarity on the permit reference number that needs to be displayed under the Consultation and Publicity condition”<sup>52</sup>.*
- 3.14 Annex 3 also provides case study examples of recent HA permit condition requests at the point of the permit being applied for and, Annex 4 after the permit has already been agreed. Conditions must be complied with to ensure that our work in the highway is undertaken legally. Whilst WPD make every reasonable effort to influence and challenge the appropriateness of the imposed conditions, the HA has the powers to not grant the permit if we do not comply with the conditions set out.
- 3.15 With regard to Ofgem’s assessment of our administrative costs (see paragraph 3.6) our original submission clearly sets out where operational efficiencies have been delivered. For example, section 3.3.1.1.4 sets how the centralisation of administrative functions delivered by the WPD records teams enables the sharing of best practice across our DNOs<sup>53</sup>.
- 3.16 WPD are not in a position to justify why our costs are above the benchmark given we cannot assess the cost make-up of other DNOs submissions; only Ofgem, with visibility of all submissions, can make this assessment. Requests for further information to further justify WPD’s costs did not form part of Ofgem’s supplementary questions (SQ) process and this matter only arose due to WPD’s request to meet with Ofgem and the specific concern we raised in the meeting regarding the omission of our data from the benchmark. WPD would also be happy to provide further information following this consultation response, if there are still areas where Ofgem consider information unclear compared to other DNO submissions.
- 3.17 WPD also disagrees that fluctuations in unit costs over time is an inconsistency. In WPD’s experience, year on year movements in unit costs have and do happen for the following reasons:
- 3.18 Permit fee unit costs:

<sup>50</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 26

<sup>51</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 26

<sup>52</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 23, section 3.3.1.3

<sup>53</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 21

- a. Highway Authorities change their fees. WPD have been notified by HAs increasing their fees in ED1<sup>54</sup>. Please see also paragraph 3.52c.
- b. Highway Authorities change the design of their permit schemes, for example commencing permit schemes on non-traffic sensitive roads that were previously covered by noticing arrangements<sup>55</sup>. As fees levied on non-traffic sensitive roads are typically lower than on traffic sensitive roads of an equivalent category, all other things being equal, this will decrease permit fee unit costs.
- c. Each year WPD's street work activity profile fluctuates. Activity types vary by scope and duration (e.g. major, standard, emergency, etc. street works) and take place on different types of roads (different road categories and whether they are traffic sensitive or non-traffic sensitive roads). Reflecting the unique circumstance of each work as per the above categorisations the permit fees charged will differ street work to street work. Therefore year on year permit fee unit costs will fluctuate and this reflects differences in the number of street work volumes undertaken on roads on which different levels of permit fees are levied. For example, in one year more (less) major (minor) street works of longer (shorter) duration on traffic sensitive (non-traffic sensitive) roads may be undertaken than the next year and so costs are higher (lower) in relative terms to the preceding or subsequent year.

- 3.19 Permit administration unit costs – these are broadly speaking considered proportionate to permit fee unit costs, because they are driven by the volumes and complexity of permits required. The above arguments can also explain why movements in permit administration unit costs have and do occur.
- 3.20 Condition unit costs – as set out in our original submission<sup>56</sup>, permit conditions are specified by the HA and these can and do vary from authority to authority and are to a large extent beyond management control. The roll-out of new permit schemes in a DNO area where a HA may impose significantly more (or less) conditions than seen elsewhere in the DNO will therefore lead to a change in condition unit costs historically observed. Furthermore, WPD would expect costs to move year on year given the infancy of the street works policy environment whereby street work arrangements are still bedding down, meaning new and different costs may yet be incurred (see also paragraph 3.52a). Similarly, changes in guidance have and could have a material impact on the imposition of conditions by a HA and the subsequent costs incurred by a DNO associated with complying with such conditions. Annex 3 demonstrates this with regard to the roll out of the HAUC (England) National Permit Guidance in the summer of 2017.
- 3.21 Ofgem makes a separate assessment of NPG's two DNOs. Therefore, in excluding WPD from the benchmark (three DNOs), only three DNOs, out of the eight that submitted SSWC claims, actually enter into the benchmark. WPD consider that the benchmark is not robust or representative, given that it omits more than half of the DNOs that submitted claims and it is perhaps not surprising therefore that Ofgem's assessment of WPD's submitted costs are unfavourable relative to the benchmark<sup>57</sup>, given our data does not inform the reference point.
- 3.22 WPD therefore request that our data points be included in the benchmark on the basis that unit cost fluctuations is an unreasonable justification for their exclusion and also to provide a more representative view of the received submissions and to avoid a downward bias to unit cost benchmarking.

<sup>54</sup> Examples: Worcestershire County Council (WMID), increased their permit fees levied, 20 April 2019; Doncaster Metropolitan Borough Council (EMID), increased their permit fees levied, 8 April 2019

<sup>55</sup> Examples: Northamptonshire County Council (EMID) changed permit scheme design 1<sup>st</sup> June 2016: The HA operated a permit scheme on all streets from 16/03/2015 however, only charged permit fees on traffic sensitive and 0,1,2 category roads. From 16/03/2015, the HA commenced levying fees on all roads. Nottingham City Council (EMID) changed permit scheme design 1<sup>st</sup> April 2016: The HA operated a permit scheme on all streets from 16/03/2015 however, only charged permit fees on traffic sensitive and 0,1,2 category roads. From 01/04/2016, the HA commenced levying fees on all roads.

<sup>56</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 9-10, section 2.3.2.3

<sup>57</sup> As an example, Ofgem assessed for EMID that "EMID's administration costs are comparatively higher when benchmarked against other DNOs" (Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.23)

#### Differences in calculation methodology of unit cost between reopener data and RRP data

- 3.23 As set out in paragraph 3.2, Ofgem uses a different mathematic approach to calculating the unit cost informed from the RRP data to that informed from the reopener data. It is not clear in the consultation why a different approach has been used and the current approach means that different unit costs for the respective data sources are arrived at, compared to if a single method was applied to both data sources.
- 3.24 From a consistency perspective, adopting the unit cost methodology performed on the reopener data is mathematically preferred by WPD to that used on the RRP data because it smooths costs and volumes over time, both of which are subject to year-on-year movements (see paragraph 3.18 to 3.20). WPD request that a consistent approach to the calculation of unit costs be adopted, or preferably that the RRP data should not be used to inform Ofgem's benchmarking assessment of SSWC in the RIIO-ED1 assessment (see paragraph 3.26 to 3.30).

#### Inconsistencies and differences between DNO submissions

- 3.25 Ofgem take an average across their assessed view of unit costs for each SSWC component; permit fee, administration and condition costs for each DNO included in the benchmark (ENWL, SMPW, EPN). The applied methodology of averaging component unit costs is not appropriate given differences between HAs. For example:
- a. Permit fees – HAs levy different fees and street work undertakers are not in a position to influence the fee setting process; therefore taking an average and applying that to another DNO's submitted costs is not appropriate as they cannot influence HAs to set fees at the benchmarked average cost (see also paragraph 2.12).
  - b. Administration costs and condition costs – DNOs have reported administration and condition costs differently (as set out in paragraph 1.34 and also Annex 2), therefore taking an average of administration unit costs across DNOs and similarly taking an average of condition unit costs across DNOs leads to interpretational issues. For example, compliance with which conditions are included in the benchmarked condition unit cost?

#### Use of RRP data in benchmarking

- 3.26 WPD recommend that Ofgem does not use the RRP data to assess the SSWC submitted claims as the two data sources are not comparable. Ofgem's minded to methodology, which combines (by taking an average) a unit cost view developed from RRP data and a unit cost view taken from reopener data, leads to a benchmark unit cost view which cannot be easily interpreted given differences in the source data from which the benchmark is jointly derived.
- 3.27 As discussed in detail in WPD's SQ submission on 1 July 2019, WPD consider that there are material differences in the reporting requirements between the RRP and the reopener.
- 3.28 In the bilateral meeting on 2 September, Ofgem also discussed the requirement to review the RIGs associated with street works reporting later this year for use in any future logging up assessment, thus implicitly acknowledging that there are issues with the RRP reporting.
- 3.29 In Ofgem's calculation files and in the consultation, it is not apparent that Ofgem have made any form of normalisations or adjustments to either DNOs submitted RRP or reopener data to reflect such differences in the reporting (see also paragraph 3.45 to 3.49).
- 3.30 In summary, WPD consider data reported in the RPP and reopener is non-comparable and therefore combining the two sources in a simple average is not appropriate. Whilst WPD cannot comment on the reporting approaches used by other DNOs that did inform the benchmark (ENWL, SPMW, EPN), any differences that do



exist will invalidate a simple averaging approach as there is no evidence that in Ofgem's development of a unit cost from the RRP or reopener data that any reconciliation adjustments have taken place.

#### Treatment of permit variation cost and volumes

- 3.31 Ofgem's unit costs are misaligned due to differences in their treatment of submitted volumes<sup>58</sup> and submitted costs<sup>59</sup> in the calculation of unit costs. This is driven by permit variations in particular.
- 3.32 WPD has reported variation volumes and variation fee costs in both its reopener submission and the RRP. Ofgem has removed permit volumes from their assessment of our reopener data<sup>60</sup>. Ofgem has not however removed permit variation fee costs from our reopener data<sup>61</sup>. Ofgem has also not removed permit variation fee costs or permit variation volumes from our RRP data<sup>62</sup>.
- 3.33 Ofgem's method for calculating the unit cost based on the reopener data is therefore misaligned, as whilst the unit costs include variation fees, the volumes from which they are derived do not. This means that the derived unit costs Ofgem have calculated for WPD are artificially high.
- 3.34 If such misalignments in the exclusion of permit volumes and the inclusion of permit fee costs are similarly apparent for ENWL, SMPW and EPN, this means the benchmarked unit costs are not interpretable. For example, is Ofgem setting the reference point for unit costs with or without permit variations?
- 3.35 Furthermore, whilst Ofgem's method for calculating unit costs from the RRP data is consistent, the subsequent step in Ofgem's methodology which takes an average of the two unit cost views, developed from the respective data sources, means that Ofgem are combining two measures that are not comparable, meaning the resulting unit cost derived is inaccurate and cannot be easily interpreted given differences in the source data from which it is jointly derived.
- 3.36 In summary, as volumes of street work activity drive costs, it is unreasonable for Ofgem to remove permit variations volumes from their assessment but retain permit variation fee costs. WPD request that a consistent approach be followed for Ofgem's final decision and that this take the form of reinstating permit variation volumes as was allowed for in Cadent's claim in the RIIO-GD1 control (see paragraph 1.27c).

#### **Concerns regarding Ofgem's developed permit fee unit cost benchmarks:**

- 3.37 Ofgem's benchmarking of permit fee unit costs is non-compliant with regulatory guidance; the approach is over-simplified and does not take account of the street works policy context. The RIIO-ED1 Strategy Decision sets out that the "*TMA permitting reopener*" will provide protection of "*the level of fees set by the relevant authorities*"<sup>63</sup>. However, Ofgem take an average of fees across DNOs, and does not include fees charged to WPD in the permit fee unit cost benchmark.
- 3.38 WPD requests, consistent with guidance, that appropriate protection of the permit fees levied by HAs, be acknowledged in Ofgem's final decision methodology. This needs to more formally acknowledge that a single HA does not simply charge a single fee, but that a range of fees are chargeable by a HA reflecting the scope

<sup>58</sup> The numerator in the calculation of unit costs

<sup>59</sup> The denominator in the calculation of unit costs

<sup>60</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 2.15

<sup>61</sup> Cross referencing tab "Submissions" in Ofgem's assessment file, with Table 4.1 of WPD's original submission confirms that Ofgem has directly lifted WPD's submitted reopener fee cost data with no adjustment.

<sup>62</sup> Cross referencing tab "CV RRP-M9 tabs" in Ofgem's assessment file, with WPD's early SQ submission of the RRP tables confirms that Ofgem has directly lifted WPD's submitted RRP cost and volume data With regard to costs and volumes inside the price control (Connections, Investment, Faults, Maintenance)

<sup>63</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1 overview paper, Table 3.1

and duration of the street work activity, the road classification and the traffic-sensitivity of the road (WPD set this out in our original submission (see section 2.3.2.2)).

- 3.39 This suggests that a more sophisticated assessment approach, in which permit fees should not be subject to benchmarking, is required to acknowledge that:
- a. Different HAs implement different permit fee structures and that to arrive at an average permit fee per HA, or indeed an average permit fee unit cost across DNOs is oversimplifying the policy environment of how street work schemes are operated (see also paragraph 2.12). As set out in paragraph 3.25a, applying an average permit fee unit cost is not appropriate as DNOs cannot influence HAs to charge their fees at a level equivalent to the benchmarked average.
  - b. Different DNOs will have a different split of street work activities across the different road classifications for which the above different fees apply. For example, one DNO may have a far higher proportion of works on major roads than others and this reflects the nature of roads in that HA (e.g. roads in highly urbanised areas) and also where the street work activity is taking place. Therefore, by using an average permit fee unit cost, not only overlooks different fee structures chargeable by different HAs but also the volumetric component that different DNOs may incur costs above / below the average due to how their street work activities maps to the fee structures chargeable.
  - c. It is unlikely therefore that an average permit fee unit cost will actually approximate the costs incurred to date by DNOs, yet alone be able to reliably forecast future costs.
- 3.40 As already alluded to above (see paragraph 3.39), WPD consider it inappropriate to create a single view of permit fee unit costs given for the following reasons:
- a. Different HA arrangements (see also paragraph 2.9). To illustrate how different HA arrangements can lead to different fee structure and fees levied and therefore non-comparability of arising DNO costs, the following exemplifies the spread of fees associated with permit schemes on Category 3 & 4 major works on non-traffic sensitive roads: the national average fee charged is £119.47, the average for the Greater Manchester area (GMRAPS) is £110.00 and the WPD average is £137.27.
  - b. Likely differences in DNO approaches to reporting (inclusion / exclusion) of permit variation fees, meaning that it is not possible to interpret the derived unit benchmarked cost. For example, does it explain the benchmark for simply permit fees, or permit fees and permit variation fees combined?
  - c. Localised application of DfT legislated street works policy and the impact this has on fees (and also conditions). It is not appropriate to set an averaged single view of permit fee unit costs and condition costs due to the inability of DNOs to influence either the permit fee or condition setting process (see also paragraphs 2.12, 3.20, Annex 3 and Annex 4).

As a result of the above operational or reporting differences, it is not possible to accurately define what unit of activity the average or unit benchmarked cost actually relates to. Therefore any subsequent comparison of DNO costs to the benchmark is equally fraught with interpretational difficulties.

- 3.41 Ofgem's calculation file also develops alternative views of permit unit costs (additional to those set out above); one for the forecast period to the end of ED1 (called "average forecast") and one for the ED1 total period (called "RIIO-ED1 average").

Ofgem, in basing their unit cost benchmarks on only ED1 to date data, overlooks the importance of forecasts and changes in street works landscape which are likely to cause the future incurrence of costs by DNOs to differ from those actually incurred to date and this could work in both positive and negative directions. Generally speaking, future costs are likely to be different to actual costs on a unit basis, for example due to HAs applying

fees to all roads where permit schemes only currently cover some roads or changes in the landscape of imposed permit conditions as examples.

On this basis Ofgem may wish to consider developing a unit cost profile that takes greater account of changes in the street works policy going forward and the likely impact this will have on unit costs. Considering DNOs submitted reopener forecast costs would appear to be a reasonable starting point.

#### **Concerns regarding Ofgem's developed condition and administration unit cost benchmarks:**

- 3.42 As per above, it is inappropriate to create single view of condition costs, given differences in conditions imposed on HAs (see paragraph 1.34).
- 3.43 Ofgem have previously determined that condition costs are not comparable<sup>64</sup>: Ofgem have in this previous assessment of street work costs acknowledged the volatility of data in regard to condition costs (see paragraph 1.24). WPD request that Ofgem reconsider this past assessment and consider a more case-by-case, SSWC component by component assessment that more accurately takes into account the prevailing HA operating circumstances affecting each DNO.
- 3.44 Furthermore, different DNO approaches to reporting administration and condition costs (see paragraph 1.34 and also Annex 2) reinforces the non-comparability of this data.

#### **Normalisations**

- 3.45 With regard to Ofgem's unit cost benchmarking, it is not apparent that Ofgem have made any adjustments or normalisations to the submitted data or their assessment approach to acknowledge differences in received SSWC submissions or differences in the policy landscape. This has led to a skewed benchmarking assessment; the implied unit costs of which are inaccurate and cannot be easily interpreted due to differences in the source data from which they are derived.
- 3.46 Ofgem do not provide any assessment of the comparability of the data received in the SSWC submissions or any evaluation of the confidence in their findings as a result.
- 3.47 They also do not provide any evidence of data cleansing activities undertaken on the underlying data to ensure that volumes and costs are being compared on a like-for-like basis; other than to say that data points are removed due to showing year on year movements<sup>65</sup> (see paragraph 3.5 to 3.6).
- 3.48 WPD request that Ofgem provide greater transparency of their approach to unit cost benchmarking in their published final decision: the differences in received SSWC reopener submissions, further evidence of data cleansing activities and the normalisations and adjustments subsequently undertaken. This is required to understand whether the comparative assessment of unit costs over time and across DNOs has been done on a like-for-like basis and that therefore a consistent, accurate and interpretable set of specified street work unit costs has informed Ofgem's benchmarking and ultimately decision.
- 3.49 WPD request that Ofgem's quantitative approach be supplemented with a case by case qualitative assessment of DNO's respective SSWC claims, cost component by cost component (see paragraph 1.27a). This is required in order to understand the operational differences of DNOs with regard to street work policy, differences in the approach DNOs have taken to the RIIO-ED1 SSWC submission and to more appropriately align with the approach adopted by Ofgem in assessing Cadent's claim in the RIIO-GD1 SSWC reopener.

<sup>64</sup> Ofgem (2014) RIIO-ED1 Slow Track Final Determination: Business Plan expenditure assessment, para. 10.45

<sup>65</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para 2.9

## Inconsistent and unreasonable application of a three per cent efficiency challenge

WPD disagree that Ofgem's application of a three per cent efficiency challenge is in line with the RIIO-GD1 control as stated in the formal consultation. Ofgem applied a three per cent challenge to all ED1 SSWC provisionally awarded; however applied a three per cent to GD1 administration costs only. In the interests of equal treatment and the inability of DNOs to influence such costs, WPD request Ofgem remove application of the three per cent efficiency challenge for permit fee and condition costs submitted in the ED1 reopener.

- 3.50 Ofgem set out in paragraph 2.12 of the formal consultation that, *"For forecast costs, from 2019-20 onwards, we...applied a 3% efficiency reduction. This approach is consistent with the approach we took in regards to RIIO-GD1 SSWC reopeners in 2018"*<sup>66</sup>.
- 3.51 WPD disagrees that the approach is consistent with that used to assess the RIIO-GD1 reopeners. A single claim was submitted and assessed as part of the RIIO-GD1 street work reopener in 2018. This was prepared by Cadent Gas Networks Limited. Cadent claimed additional SSWC allowances for permit fees, administrative costs and productivity cost impacts<sup>67</sup>. In their assessment of forecast costs, Ofgem applied a three per cent efficiency challenge to only the administrative cost component of Cadent's claim<sup>68</sup>. In contrast, in Ofgem's assessment of the RIIO-ED1 SSWC reopeners, Ofgem applied a three per cent efficiency challenge unequivocally to all permit fee, admin and condition costs submitted by DNOs.
- 3.52 WPD considers that Ofgem's application of a three per cent efficiency challenge to all aspects of awarded SSWC in ED is unreasonable and inappropriate for the following reasons:
- a. An average of one per cent ongoing efficiency challenge was applied by Ofgem in their assessment of DNO's business plans for ED1<sup>69</sup>.
  - b. Street work arrangements are still bedding down. A number of schemes are in their infancy or are due to be rolled out in the near future (see paragraph 2.4 and Annex 5). As such new costs will likely be incurred associated with scheme implementation and establishing efficient ways of working. This dynamic policy landscape and the likely incurrence of new and additional costs makes delivering a three per cent efficiency unreasonably stretching.
  - c. DNOs are limited in their ability to influence the fee setting, or condition setting, process (see also paragraphs 2.12, 3.20, Annex 3 and Annex 4). As set out in our May 2019 submission *"WPD has limited ability or opportunity to influence permit scheme fees. When consulting on fee levels in a scheme consultation, a HA [Highway Authority] should produce a cost benefit analysis that demonstrates the validity of the level of permit fee they have chosen, subject to the cap of maximum fee levels. WPD will normally respond to each HA's consultation and challenge as appropriate. However ultimately it is the HA's decision whether they implement their consulted fees or not"*<sup>70</sup>. Also, permit conditions are specified by the HA and these can and do vary from authority to authority. WPD has worked locally with HAs and also at a national level to improve the consistency regarding the application of permit conditions by HAs across schemes, however ultimately these are specified by the HA. This was also set out in our original May 2019 submission<sup>71</sup>.

<sup>66</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para 2.12

<sup>67</sup> Cadent (May 2018) East of England Uncertainty Mechanism Claim, Table 4. Productivity cost impacts in Cadent's submission are akin to the additional costs incurred due to complying with imposed conditions (i.e. condition cost impacts).

<sup>68</sup> Ofgem (August 2018) RIIO-GD1 Reopener Consultation - Specified Street Works Costs, p. 13. Ofgem did not change their position between Consultation and Final Decision.

<sup>69</sup> Ofgem (2014) RIIO-ED1: Final determinations for the slow-track electricity distribution companies: Business plan expenditure assessment, p. 158, para. 12.49

<sup>70</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 3.3.1.2

<sup>71</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 2.3.2.3

- d. With regard to permit fees in particular, it is unforeseeable that HAs will reduce fees in the remainder of ED1. As per the fee setting process set out in paragraph 2.12, it is difficult to envisage how a DNO can reduce permit fees chargeable in the remainder of the price control period given fee levels are determined by each HA by cost benefit analysis and subject to maximum chargeable levels as set by the Department for Transport<sup>72</sup>. Furthermore, the maximum chargeable fees were set by the DfT in nominal terms back in 2007<sup>73</sup>; it is highly unlikely that these will reduce in the future and it is more likely that maximum fee levels will increase. The DfT have asked as part of the Street Manager consultation<sup>74</sup> if there is an appetite to raise the maximum fee to enable the recovery of Street Manager costs incurred by permit authorities from utilities. For a number of HAs in WPD Licence areas, we have already observed an increase in their permit fees charged (up to the current maximum level)<sup>75</sup>. WPD has not received notification from any HAs operating permit schemes in our area of a decrease in fees and we consider it highly unlikely that this will be the case going forwards.
- e. For WPD, any efficiency challenge applied to permit fee costs cannot and should not be met by reducing permit volumes. WPD undertakes street works in line with need and where such activities take place on roads requiring permits, we apply for and comply with any arrangements set out by the respective HA. As also set out in our original submission, “WPD is not able to influence on the volume of permits in its Licence areas”<sup>76</sup>. It is not appropriate for WPD to either avoid working on roads where permits apply or seek to reduce street work activities generally at the compromise of service delivery, customer satisfaction and health and safety. Beyond “ensuring work is performed in a single phase of activities (e.g. first time permanent reinstatement)”<sup>77</sup> a best-practice approach already embedded in WPD’s business as usual activities, there is very limited opportunity for WPD to influence the forecast volumes of work required and hence the totality of permit fee costs incurred.

## Ofgem assessment of the ‘reasonableness’ of volumes

Ofgem’s assessment relies on a view of the number of permit schemes in operation in any one year of ED1. Ofgem’s applied methodology appears to overlook present reality insofar as, for example, Ofgem forecast that our EMID Licence area will have 13.8 permit schemes in place by the end of the control; however we are able to confirm 18 are currently in place at the time of writing.

Ofgem’s profiling also overlooks previous guidance and DfT policy instructions and develops, at best, a rather crude approach with regard to HA differences in permit scheme design.

WPD raise a number of further concerns with regard to Ofgem’s assessed the view of average number of permits per scheme and Ofgem’s judgement with regard to the mapping of HA road networks to DNO Licence areas, the latter for which Ofgem make factually incorrect statements with regard to WPD in particular.

Overall, Ofgem’s assessment of the reasonableness of volumes has drawn different conclusions for WMID and EMID, when WPD have applied the same forecasting approach to both. We would encourage Ofgem to review

<sup>72</sup> DfT (2015) [Statutory Guidance for Highway Authority Permit Schemes](#), p.29

<sup>73</sup> The maximum permit fee is set within The Traffic Management Permit Scheme (England) Regulations 2007 (Statutory Instrument 2007 No. 3372), Regulation 30 Power to charge a fee and discounts sets out the following ( numbers relate to the regulations): (4) The maximum fee which may be charged in respect of the issue of a permit is £240; (5) The maximum fee which may be charged in respect of an application for a permit is £105; (6) The maximum fee which may be charged in respect of each occasion on which there is a variation of a permit or a condition attached to a permit is £45. Note, the matrix of charges set out in the guidance (DfT (2015) [Statutory Guidance for Highway Authority Permit Schemes](#), p.29) exists to scale those charges downwards for different categories of work is set in Statutory Guidance only. Each Permit Authority is expected to set their permit fees up to the maximum in the Statutory Guidance.

<sup>74</sup> DfT (2019) [Street and road works: Street Manager and updates to permit schemes](#), p.15, para. 40

<sup>75</sup> Worcestershire County Council (WMID), increased their permit fees levied, 20 April 2019; Doncaster Metropolitan Borough Council (EMID), increased their permit fees levied, 8 April 2019

<sup>76</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 3.3.1.1

<sup>77</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 3.3.1.1



their approach with regard to our observations, ensuring that the prevailing and expected future policy environment of street works is incorporated.

- 3.53 Ofgem's calculation files sets out their approach to assessing the reasonableness of volumes submitted by DNOs. This is summarised, at a high level, below.
- a. Ofgem assess actual volumes to be equivalent to those submitted by DNOs, excluding variations (as per SQ responses).
  - b. Ofgem do not use DNO submitted forecast volumes to inform their assessment. Instead Ofgem develop their own view of forecast permit volumes. This is derived by multiplying their view of the number of permit schemes in operation in a DNO in any one forecast year by their view of the average number of permits per scheme for the respective DNO (static over forecast years).
  - c. Ofgem's view of the number of permit schemes in operation in a DNO in any one year of ED1 (both actual and forecast) is calculated as follows. Ofgem firstly undertakes a granular HA level assessment of the number of months a HA permit scheme has been in operation in any one year. Ofgem then multiply this by their view of the percentage coverage of that HA in the DNO's Licence area multiplied by their judgement as to whether the scheme is fully or partially in operation. This HA level assessment is then aggregated for all HAs residing in the respective DNO for the respective year.
  - d. Ofgem determine the average number of permits per HA scheme in forecast years to be the average across ED1 years to date of the annual average number of permits per scheme. That is, Ofgem first derives a view of the average number of permits per scheme for the DNO for each year of ED1 to date; then averages this across the first four years of ED1. Ofgem calculate the average number of permits per scheme for each year of ED1 to date, by taking the actual permit volumes submitted by DNOs, excluding variations (see paragraph 3.53) divided by Ofgem's view of the number of permit schemes in that year (see paragraph 3.53b).

In summary, Ofgem rely on three core concepts to assess their view of the reasonableness of permit volumes, actual and forecast: the number of permit schemes, Ofgem's assessed view of permit volumes and the average number of permits per scheme.

- 3.54 The following paragraphs set out WPD's concerns regarding this method of assessing the reasonableness of permit volumes.

#### Assessed view of the number of permit schemes

- 3.55 Ofgem's assessment relies on a view of number of permit schemes in operation in any one year of ED1 (both actual and forecast). At the time of submission 17 of the 21 HAs in the EMID were already operating permit schemes<sup>78</sup> and yet Ofgem's assessment concludes that by the end of ED1 only 13.8 schemes will be in place. WPD expects the remaining 3 HAs in EMID to move to permit schemes in ED1. Table 1 summarises the profile of the roll-out of permitting HAs developed by WPD and Ofgem with regard to each of our DNOs that submitted a claim.

<sup>78</sup> This has increased to 18 since submission, Peterborough's permit scheme went live 1/4/19



Table 1 - Profile of Permitting HAs, WPD and Ofgem comparison

Profile of Permitting HAs, WPD and Ofgem comparison		Actual				Forecast			
		Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8
		2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
WMID	WPD	3	5	5	7	17	17	17	17
	Ofgem	1.0	2.8	3.0	4.0	8.2	10.5	10.5	10.5
	Difference	-2.0	-2.2	-2.0	-3.0	-8.8	-6.5	-6.5	-6.5
EMID	WPD	11	14	15	17	21	21	21	21
	Ofgem	5.2	8.0	9.1	11.3	13.0	13.8	13.8	13.8
	Difference	-5.8	-6.0	-5.9	-5.7	-8.0	-7.2	-7.2	-7.2
SWEST	WPD	0	0	0	0	10	10	10	10
	Ofgem	-	-	-	-	2.3	9.5	9.5	9.5
	Difference	-	-	-	-	-7.7	-0.5	-0.5	-0.5

- 3.56 In our bilateral meeting with Ofgem on 2nd September 2019 we raised our concerns regarding Ofgem's profiling of the permit scheme roll-out as shown above. In response, Ofgem said that their development of an independent view of the number of permit schemes in place in a DNO "was simply to act as a cross check on the submitted volumes provided by DNOs". However, in reference to the excel calculation files, WPD note Ofgem do not use DNOs submitted volumes, but instead prepare a view of 'Ofgem assessed permit volumes' by multiplying their view of the number of permit schemes in place by their view of the average number of permits per scheme. Therefore, Ofgem's independent development of the number of permit schemes in place in a DNO, for the ED1 forecast years, is directly based on what has been described as a cross-check only.
- 3.57 We have reservations that Ofgem's method of assessing the number of permit schemes in place does not appear robust when compared to actual observed reality; this suggests that the method is likely to also not be robust in the forecasting of the number of permit schemes to be rolled out in the future.
- 3.58 Furthermore, Ofgem's assessed view of number of permit schemes in operation in any one year of ED1 is based on four components. The appropriateness of each is considered in turn:
- 3.59 **The number of months a HA permit scheme has been in operation in the respective year.** WPD consider Ofgem's approach to scaling permit volumes in accordance with the number of months the scheme has been in operation in any given year appropriate.
- 3.60 **The percent coverage of HA in DNO Licence area.** WPD raise a number of concerns with this data.
- This information was required as part of a SQ post submission. The requirement of its provision was ill-defined by Ofgem and requested by Ofgem with urgency at short notice (see also paragraph 1.37).
  - DNOs are not concerned with the percent of HAs roads that fall into their network, only the effective management of street works. DNOs do not readily have access to HA data, especially where this concerns roads beyond their network of operation. As such WPD's provision of the HA percentage coverage data by DNO was an estimate and we envisage other DNO data provision was similar. Ofgem would have received a more comprehensive view by directing this data request to the Department for Transport.
  - It is not clear how Ofgem have sought to reconcile the different views provided by DNOs. For example, in our SQ response we estimated that 85% of Shropshire HA road network resides in the WMID. In Ofgem's assessment file this has been reduced to 77%. It is not clear how Ofgem have sought to reconcile this with the view provided by SPMW, for which they also undertake street works on roads residing in the Shropshire HA. WPD request that further information be provided in Ofgem's final

decision which sets out their approach to determining the percentage coverage of HA road networks to DNO network areas.

- d. Ofgem make factually incorrect statements with regard to the mapping from Highway Authority to WPD's networks. Ofgem set out in their consultation that *"there are a number of HAs in WMID's network area that are shared with other DNOs but are included as sitting fully within WMID's network area"*<sup>79</sup> and cite Cheshire East as a particular example. This is factually incorrect. WPD's submission includes costs and volumes **only** for street work activity undertaken on roads that reside in our network area. For example, for WMID, in Cheshire East in 2018/19 we have sought allowances for 72 street works completed in this area; in our SQ response we estimated approximately 1% of the HA road network resided in WMID. In contrast, in WMID for Worcestershire in the same year, we have sought allowances for 914 street works for a HA's road network that resides fully in the DNO. WPD only collates information on street works we have undertaken in our patch. Our engagement with HAs only concern our street work activities in our network. We do not have access to street works undertaken by other utilities and we would not seek to claim these as our own. WPD request that Ofgem make a correction to this statement in the publication of their final decision.
- e. Ofgem only consider instances where HAs overlap DNO networks for DNOs that submitted SSWC claims. For example, the road network operating by the HA of Dorset County Council resides both in the SWEST (WPD) and also in SSES (SSE) area. SSES did not submit a SSWC in the May 2019 reopener. Despite the SWEST only having partial coverage of this HA's network, Ofgem have assessed that 100% of the HA's road network resides in the SWEST area.

**3.61 Ofgem's judgement as to whether the scheme is fully or partially in operation.** Ofgem apply either a 100% or 50% scaling adjustment to their view of the number of permit schemes in operation in any one year based on their assessment of whether the scheme is fully or partially in operation in that respective year. WPD raise a number of concerns with this approach.

- a. It is not clear how Ofgem have defined or applied the full / partial assessment of a scheme's operation and whether a consistent application of this judgement has been applied across HAs and across DNOs. This is important given that different HAs operate and implement permit schemes in different ways.
- b. Given this non-comparable environment of HA permit schemes designs, allocating sophisticated and bespoke schemes into 'full' or 'partial' categories is a crude assessment at best. For example, Ofgem assess that Buckingham in EMID is a partial scheme. Buckinghamshire operates a permit scheme on traffic sensitive roads and correspondingly charges permit fees for the servicing of permit applications on these roads; Buckinghamshire operates a notice scheme on non-traffic sensitive roads. In Ofgem's assessment of Buckinghamshire as a partial scheme, Ofgem, by applying a 50% scaling factor therefore assumes (in formulating a view of the number of permit schemes in operation) that Buckinghamshire operate half a scheme. This is incorrect, the HA operates a full scheme but on less than the full road network. Ofgem would be better making some sort of adjustment to their view of the number of permits per scheme to reflect the coverage of permits across a HAs road network. For example, as a proxy for road coverage, in 2018/19, WPD undertook 30 street works on traffic-sensitive roads covered requiring a permit and 76 street works on non-traffic sensitive roads (noticing) in Buckinghamshire.

**3.62 Ofgem's judgement of treatment of ex-ante allowances.** In a similar approach to Ofgem's assessment of whether a scheme is fully or partially in operation, Ofgem apply similar treatment to WPD schemes where we set out in our original submission permit schemes for which allowances had already been granted in opening ED1 allowances and make clear that these have not been included in reopener (i.e. not claimed for twice). These related to permit schemes on traffic-sensitive roads only.

<sup>79</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.7

Ofgem's calculation file acknowledges that the HA of Doncaster Metropolitan Borough Council and Northamptonshire County Council in the EMID had "*Sensitive roads funded as part of RIIO-ED1*". Ofgem overlook that also in EMID, sensitive roads in Sheffield City Council HA were also funded as part of RIIO-ED1 opening allowances, despite all three schemes being clearly signposted in our original submission<sup>80</sup>.

In light of this, WPD request that Ofgem make clear in publication of their final decision how they have treated ex ante allowances of SSWC in respect of all DNOs.

#### Average number of permits per scheme

- 3.63 Ofgem's assessment relies on a view of the average number of permits per scheme (both actual and forecast). We consider this approach problematic for the following reasons.
- 3.64 Ofgem's forward looking view of the average number of permits per scheme is static. This overlooks a key part of the policy environment, that it is highly likely that in future years the average number of permits may increase as HAs currently operating both notices and permits on their road network move to only permitting arrangements – therefore more permits per scheme. This assumption is a logical implication of instructions set out by the Secretary of State for Transport. WPD therefore request that Ofgem revise their forward looking view of the average number of permit schemes to take greater account of the dynamism of the policy landscape. By basing the forward looking view of the average number of permit schemes on Ofgem's calculation of the average number of permit schemes in each ED1 year to date, Ofgem overlooks likely movements in the number of permits per scheme and therefore these forecasts are lower than WPD would otherwise expect them to be.
- 3.65 This overlooks that HAs are of different sizes. DNOs will proportionally have more (less) street works requiring permits on HAs with larger (smaller) road networks and therefore taking an average is a poor descriptive measure of such characteristics, as it provides an over-simplified view of the differences between HAs.
- 3.66 Ofgem calculate the average number of permits per scheme for each year of ED1 to date, by taking the actual permit volumes submitted by DNOs, excluding variations, divided by Ofgem's view of the number of permit schemes in that year (see paragraph 3.53c). Using Ofgem's view of the number of permit schemes as an input, invalidates the approach given the aforementioned issues with this input (see paragraphs 3.55 to 3.57).
- 3.67 Ofgem have excluded permit variation volumes from their assessment<sup>81</sup>. WPD request that Ofgem reinstate permit variation volumes in their assessment of DNOs submitted SSWC for the following reasons:
- a. Variations raised by the HA are out of management control (volumes) as are the variation fees set. In the same way that permit fee costs are beyond management control (see paragraph 2.12) so too are permit variation fee costs.
  - b. Regulatory precedent for accepting permit variation costs in SSWC claims as set out in paragraph 1.27c.
  - c. Ofgem's assessment used to inform their minded-to position is misaligned insofar as permit variation volumes have been excluded, however Ofgem have retained the permit variation fee costs component of permit fees in their development of a view of permit unit costs. This leads to an imbalanced assessment approach as explained in paragraphs 3.32 to 3.36.

#### Overall reasonableness of WPD permit volumes

<sup>80</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, section 2.2.1

<sup>81</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 2.15

- 3.68 Ofgem's proposed assessment includes the following two statements: "*WMID's forecast volumes indicated that the figures were 25% higher than our forecast of reasonable volumes*"<sup>82</sup> and that "*EMID's forecast volumes indicated that these were reasonably forecast*"<sup>83</sup>.
- 3.69 WPD applied the same approach to the development of forecasts for both WMID and EMID. This approach was based on using actual levels of street work activities for HAs residing in respective DNO as an average of first four years of ED1 to date and using this as basis of activities for forecast years<sup>84</sup>.
- 3.70 As set out in all the sections above, WPD have expressed concerns with the methodology used to derive Ofgem's view of the reasonableness of permit volumes. The inconsistency clearly demonstrated in the above two paragraphs demonstrates that the final results have resulted what we perceive as incorrect conclusions and so we would encourage Ofgem to review their methodologies in this aspect of their assessment.

### Removal of Highway Authorities from the assessment

Ofgem's removal of HAs residing in WPD's area where, in their view, we have provided no certainty of permit scheme start dates overlooks the uncertain street work policy landscape in which reopener was designed. The uncertainty mechanism was intended to protect against "*the timing of the introduction of costs related to street works legislation*"<sup>85</sup>.

Aspects of Ofgem's assessment are inconsistent in that different DNOs receive different treatment for the same HA.

In light of Ofgem's confirmation to WPD that they are "*open to receipt of further information*", we have provided further evidence from HAs with regard to the roll-out of permit schemes in our area for reassessment ahead of publication of Ofgem's final decision.

- 3.71 Ofgem have removed HAs residing in WPDs area where, in their view, no evidence has been provided of certainty of start dates.
- 3.72 This judgment overlooks the policy environment of an uncertain landscape (see paragraphs 2.3 to 2.4), WPD's prior communicated view to delay assessment until we have greater certainty on the roll-out of schemes, the push urged by the Secretary of State (see paragraph 2.4), and reiterates our view of Ofgem's assessment of a uncertainty mechanism in principle but not in practice.
- 3.73 Ofgem assesses that we have not provided certainty of date for introduction of permit scheme relating to Nottinghamshire County Council. This HA overlaps both EMID Licence area (WPD) and NPGY (NPG). Ofgem have included this HA in their method for assessing NPGYs draft allowances but not for EMID. This is therefore an inconsistent approach.
- 3.74 WPD acknowledge that NPG may have been in receipt of different information from WPD from Nottinghamshire HA or that differences in interpretation have led to different views in the respective submissions of WPD and NPG. However, as part of a holistic and joined-up assessment, WPD request that a consistent approach be applied to the inclusion or exclusion of HAs in Ofgem's assessment where the same HA road network resides in more than one DNO (that has submitted a SSWC claim). It is unreasonable to provide allowance for one

<sup>82</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.7

<sup>83</sup> Ofgem (August 2019) RIIO-ED1 Reopener Consultation - Specified Street Work Costs, para. 6.19

<sup>84</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 33

<sup>85</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1 overview paper, Table 3.1

DNO and not for another in regard to the same permit scheme. WPD suggest that Ofgem may wish to engage with HAs direct or the DfT to reach a judgement on this.

- 3.75 This current treatment is likely to have a material impact on proposed allowances in EMID given that Nottinghamshire County Council manages a large road network within this Licence area.
- 3.76 At our bilateral meeting with Ofgem (2 September 2019), Ofgem confirmed that they are “*open to receipt of further information*”. In light of this statement, WPD have provided updates with regard to confirmed start dates for some HAs that have been removed from Ofgem’s proposed assessment. These updates have been provided in Annex 5. We request that Ofgem consider these updates as part of their revised assessment following this consultation process. Street works and the implementation of permit schemes continues to be a fast-moving environment, and so if any further updates are received from HAs post 6 September, we would like to forward this new evidence onto Ofgem for their consideration ahead of their final decision.
- 3.77 Ofgem have not explicitly assessed our view of when we expect HAs in SWEST to go live. Our view of the roll-out of permit schemes in the SWEST provided in our submission on 31 May 2019 was consistent with information provided by the respective SWEST HAs, roll-out assumptions we applied for other HAs not yet permitting in our other licensee and the instruction from the Secretary of State for Transport (see paragraph 2.4) to HAs that permit schemes must be implemented with immediacy. At the time of submission, WPD were able to provide certainty of dates for the 5 HAs. As part of Annex 5, we have now also included more certainty of start dates for all HAs that have road networks residing in the SWEST. These are all within the next 7 months, which demonstrate the dynamism of the policy landscape in which we operate.
- 3.78 Finally, WPD do not consider that Ofgem have been accommodating of relevant guidance which sets out that the reopener will protect against “*the timing of the introduction of costs related to street works legislation*”<sup>86</sup>. In not allowing future costs for schemes where implementation is certain, Ofgem’s assessment offers no protection against the timing of the introduction of costs. Given engagement with a number of HAs and in light of instruction from the Secretary of State to all HAs not yet permitting to do so, Ofgem should therefore make provision for such uncertainties and costs in their final decision.

## **Treatment of Street works outside the price control**

WPD had removed street works that fall outside of the price control from our SSWC reopener submission on the basis that these costs are recoverable from third parties. Ofgem’s assessment appears to take place on a comparable basis at least with regard to data looked up from the RRP, however we note this is inconsistent with guidance setting out how the reopener should be approached. WPD require further clarity on the treatment of street works outside the price control.

- 3.79 In our SSWC claim submission we excluded costs associated with some street work activities, including: Remedials (i.e. permits needed to carry out further work to remedy defective reinstatement); Street works associated with new connections (which are recoverable from third parties); and ‘Works for road purposes’ (i.e. street lighting connections).
- 3.80 We excluded such costs on the basis that these costs are recoverable from third parties, or that these are avoidable costs (remedials), an approach we stand by.
- 3.81 It is noted, that, on a comparable basis, Ofgem in their development of unit costs from DNO’s RRP submissions only looked up street work data that falls inside the price control.

<sup>86</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1, Table 3.1



- 3.82 WPD however note, that the RIIO-ED1 Strategy Decision document, which sets out the approach to the reopener identifies that such costs could be included: Ofgem “*believe it is appropriate to include in any reopener review the volume of street works activity associated with load-related and new connections expenditure as well as the costs for all activities*”<sup>87</sup>.
- 3.83 WPD are not minded to propose a change to this aspect of our submission, despite Ofgem making clear in our meeting 2<sup>nd</sup> September 2019 that they are “open to receipt of further information”. In the interests of comparability and transparency, WPD do however request that Ofgem provide clarity with regard to:
- a. If other DNOs have included / excluded the above costs on the same basis as WPD in the reopener?
  - b. And, if not, what data cleansing Ofgem has done to ensure their reopener assessment of costs and volumes has been undertaken on a like-for-like basis?
  - c. Whether, in Ofgem’s view, such costs should be assessed?

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<sup>87</sup> Ofgem (2013) Strategy decision for the RIIO-ED1 electricity distribution price control: Uncertainty mechanisms. Supplementary annex to RIIO-ED1, para. 3.29

## Annex 2: Summary of the Permit Administration and Permit Condition Costs submitted by DNOs in the RIIO-ED1 SSWC Reopener

Annex 2 summarises the permit administration and permit condition costs submitted by DNOs in the 31 May 2019 SSWC reopener. Cadent's claim, in reference to SSWC reopener in the RIIO-GD1 control is also included. Given the precedence that Cadent's unit administration and unit condition costs should set for the RIIO-ED1 control it is important to understand the constituents of Cadent's costs in comparison to those submitted by DNOs.

This Annex demonstrates how DNOs have reported administration and condition costs differently in the RIIO-ED1 reopener. Such differences make the need for appropriate data cleansing, normalisation and adjustments essential in order to ensure that any subsequent benchmarking takes place on a like-for-like basis. The non-comparability of the summarised costs below supports the case that quantitative benchmarking must be complemented with a qualitative assessment of DNOs submissions.

To complete this summary, WPD have used the versions of the DNO submissions which were published as part of the informal consultation on 7 June 2019, Cadent's submission published by Ofgem in May 2018 and comments made by Ofgem in their RIIO-ED1 consultation published on 2 August 2019. It should be noted that these DNO submissions references are as per the publicly available redacted versions and may therefore not include all the information that Ofgem are party to.

### WPD

#### Administration (5 components)

- **Additional Technician office (staffing) costs** – coordinate pre and on-site activities, creating and managing all permits, e.g. interacting and communicating with HAs, agreeing timing / scope / requirements of work at start / throughout street work activity, issue / comment resolution, responsible for traffic management on site
- **Additional Records staffing requirements** – clerical support processing and managing permits, interface with IT management system of notifications, EToN, interface with WPD operational teams and HAs
- **Traffic Management Plan requirements** – their preparation including production of CAD drawings, site meetings with permit authority inspectors
- **Team Support** (staffing) - raise permits on **Immediate** works, processing invoices
- **Training** - required in advance of go-live of schemes, share best practice from WPD experience with other schemes, no refresh schemes at present

#### Conditions (3 components)

- **Light Signals & Shuttle Working (NCT08B)** – e.g. manual operation of traffic signals, ambassador on site
- **Materials & Plant Storage (NCT04A)** – e.g. removal of spoil daily
- **Consultation & Publicity (NCT11A)** – permit referencing numbers and additional site visits

### ENWL

#### Administration (2 components), although other costs cited in submission

- **Cost of processing permit applications** – desk top tasks, provision of information, IT transactions of raising permits, issues resolution, paying of invoices

- **Cost of processing the payment of associated penalties** – receiving, logging and validating FPNs including internal investigation / review (ENWL notes whilst penalty costs not included in reopener, “*the associated administrative costs of processing them are eligible and have been included*”)

ENWL also mention additional time incurred in the requirement for pre-site visits and the submission of traffic management plans, though not explicit in above items for which ENWL set out a costing methodology for.

Building on the above, ENWL in their forecasting of permit admin costs (separate section in submission) again mention the “*additional time incurred in the requirement for pre-site visits and the **submission** of traffic management plans*”

**Conditions (4 components)**, ENWL counts 4 conditions but include submission of TMPs in same list as a fifth.

- **NCT04a – Removal of surplus materials/plant**
- **NCT08b – Manual control of Traffic Management**
- **NCT09c – Signal removal from operation when no longer required**
- **NCT11a – Display of permit number**

**ENWL set out in the same list**, “*Requirement to submit a Traffic Management Plan to support a permit application for certain types of work*”. Relates again to TMP **submission** which is the same as in their explanation of admin and future admin costs, see above.

## **SPMW**

**Administration (6 components)**, although unclear how costed, e.g. by component or bundled up

- Raising Permit Applications for all Notice Types (planned and reactive works)
- Updating Permits during works stages (i.e. starts, stops, registrations, variations)
- Applying permit conditions
- Responding to Highway Authority challenges/directions via Task Summary
- Progressing requests via Engagement Management
- Analysis and reporting of compliance.

**Conditions (11 components)**

- NCT4a – Surplus material (WPD have costed this)
- NCT4b – material to be stored on site only X hours prior to use
- NCT5a – works restricted to area agreed
- NCT6a – minimum width / length to be maintained to pedestrians / vehicles
- NCT7a – high street closure, access maintained
- NCT8a – 2 way PLS in place (light signals and shuttle working)
- NCT8b – manual control of traffic lights (light signals and shuttle working)
- NCT9c – PTS removal from use (traffic management changes)
- NCT10a – works methodology will be hand dig
- NCT11b – publicity / advice to stakeholders on high road
- NCT12a – [breaking out], 10:00-20:00 weekdays, 09:00-12:00 Saturday (environmental)

## **NPG**

**Administration (3 components)**, although unclear how costed, e.g. by component or bundled up

- provision of more information when submitting applications
- increased number of interactions with HA to process refused or granted permits and communicate permit status to all those involved in the delivery of the works
- verification and processing of payment of permit fees

**Conditions (2 components)**, although restricted / reduced hours appears to be a catch-all related to conditions that impose time restrictions (most likely NCT02A)

- manned traffic lights
- restricted / reduced hours, refers to “a range of different time restrictions that can be imposed through permit conditions”

## **UKPN**

**Administration** - Not possible to identify from published submission

However Ofgem’s formal consultation refers to:

- Processing permits, associated charges and permit variations

**Conditions** - Not possible to identify from published submission.

However, Ofgem’s formal consultation refers to:

- traffic management plans
- display of permit numbers
- site visits

## **Cadent**

**Administration (3 components)**

- **Training Costs**
- **Non-field based costs** – Additional staffing resources for back-office administration (managing permits, HA liaison, issues resolution, regulation compliance), IT running costs and additional managerial costs
- **Field Based administration** – including traffic management schemes, Traffic Management Plans, pre-site surveys and site meetings to ensure traffic management compliance

**Conditions (4 components)**

- **Timing and Duration Conditions**
- **Road Space Conditions**
- **Traffic Management Provisions**
- **Methodology Conditions**
- (Consultations and Publicity considered but not costed as considered too insignificant)

## Annex 3: Further evidence on the imposition of Permit Condition Costs by Highway Authorities

Annex 3 provides further evidence to support WPD's reopener submission. This follows from a bilateral with Ofgem, 2 September 2019, whereby WPD's condition costs were in particular discussed (see paragraph 3.7 and 3.14 of Annex 1). Ofgem set out in the meeting that they are open to receipt of further information as part of WPD's response to the consultation.

Table 2 sets out at a licensee level the imposition by HAs of conditions, as per cent of total street works requiring permits, ED1 to date. The two conditions of Light Signals & Shuttle Working (NCT08B) and Materials & Plant Storage (NCT04A) are presented.

**Table 2 - Condition imposed by HAs, as per cent of total street works requiring permits, ED1 to date**

	EMID	WMID
Materials & Plant Storage (NCT04A)	9%	28%
Light Signals & Shuttle Working (NCT08B)	14%	21%

[REDACTED]

[REDACTED]

[REDACTED]

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*Serving the Midlands, South West and Wales*

[illegible]

A horizontal bar chart titled "Percentage of respondents who believe the U.S. should take action to address climate change, broken down by age group." The x-axis represents the percentage of respondents, ranging from 0 to 100. The y-axis lists age groups. The bars are black. The data is as follows:

Age Group	Percentage of Respondents
18-29	95
30-49	85
50-69	75
70+	65
18-29	45
30-49	40
50-69	35
70+	30
18-29	55
30-49	60
50-69	65
70+	70
18-29	90
30-49	85

Group	Bar 1 Length (approx. %)	Bar 2 Length (approx. %)
1	75	10
2	100	95
3	15	0
4	100	40
5	95	0

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with some bars having small gaps between them. The lengths vary significantly, with some bars being nearly full-width and others being very short.





## Annex 4: Examples of Highway Authority Imposed Variations

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Annex 5: Highway Authority Updates regarding the roll-out of permit schemes

Ofgem have removed the below Highway Authorities (HAs) from their assessment of WPD's SSWC. For EMID and WMID this is on the basis that we had not provided certainty of start date and for SWEST, on the basis that we had not, in the first instance, provided 12 months of cost data.

- **WMID (4):** Gloucestershire County Council, Herefordshire County Council, Staffordshire County Council and Stoke-on-Trent City Council
- **EMID (3):** Nottinghamshire County Council, Rutland County Council and Staffordshire County Council
- **SWEST (10), five of which WPD already had certainty of start dates at the time of the reopener submission.** The remaining five are: Dorset County Council, North Somerset Council, Plymouth City Council, Somerset County Council and Torbay Council

At our bilateral meeting with Ofgem (2<sup>nd</sup> September 2019), Ofgem confirmed that they are open to receipt of further information. In light of this statement, WPD would be grateful if all of the below updates to the certainty of scheme dates be assessed as part of Ofgem's final decision making.

This Annex presents further evidence, in the form of HA correspondence to WPD, confirming start dates for permit scheme implementation. As stated elsewhere in this consultation, street works and the implementation of permit schemes continues to be a fast-moving environment, and so if any further updates are received from HAs post 6 September, we would like to forward this evidence onto Ofgem for their consideration ahead of their final decision.

[REDACTED]

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<sup>91</sup> WPD (May 2019) Uncertainty Mechanism Claim for Specified Street Works Costs in RIIO-ED1, p. 14 section 3.1.1



## Annex 6: Definition of Street Works, as per the Licence and the RIGs

Annex 6 presents evidence from the Licence and the RIGs confirming that Lane Rental must be considered to form parts of Specified Street Work Costs, and hence such schemes and associated costs are eligible for consideration in the May 2019 reopener window.

### WPD Fast-Track Licence, CRC3F.25

<b>Specified Street Works Costs</b>	<p>means the costs incurred, or expected to be incurred, by the licensee in complying with obligations or requirements arising under any order or regulations made under Part 3 of the Traffic Management Act 2004 (or, in Scotland, the Transport (Scotland) Act 2005) that impose a permit scheme and comprise:</p> <ul style="list-style-type: none"> <li>(a) permit fee costs;</li> <li>(b) one-off set up costs;</li> <li>(c) additional administrative costs arising from the introduction of permit schemes; and</li> <li>(d) additional costs arising from the introduction of permit conditions,</li> </ul> <p>all as further clarified in the RIGs.</p>
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### RIIO-ED1 Regulatory Instructions and Guidance: Annex A – Glossary (v5.0, April 2019)

#### Street Works

Activities undertaken by a statutory undertaker which involve the occupation of the highway. Costs and volumes associated with street works include complying with traffic management legislation designed to tackle congestion and disruption to the road network during DNO activities.

It includes Traditional Street Works and Permit and Lane Rental Schemes.

**Traditional Street Works** include the following which are separately defined (with the prefix "Street Works"):

- Notices
- Notice Penalties
- Sample Inspections
- Overstay Fines
- Investigatory Inspections and Penalties
- Congestion Charges
- Street Works Admin.

**Permits and Lane Rental Schemes** include the following which are separately defined (with the prefix "Street Works"):

- Permits
- Permit Penalties
- Permit Condition Costs
- Lane Rentals
- Overstay Fines
- Permit and Lane Rental Set Up Costs
- Permit and Lane Rental Administration Costs.