

**CODE MODIFICATION PROPOSAL No 0197**

**Increasing User Incentives for the Investigation and Detection of Theft through the  
Reasonable Endeavours Regime**

**Version 2.0**

**Date:** 30/01/2008

**Proposed Implementation Date:** TBA

**Urgency:** Non Urgent

**1 The Modification Proposal**

**a) Nature and Purpose of this Proposal**

**Background**

At the end of August 2006 the Energy Retail Association (ERA) and the Energy Networks Association (ENA) jointly established a Development Group to look at how participants in the Gas and Electricity markets might promote the detection, investigation and prevention of energy theft.

The Development Group produced a final proposals document in June 2007, which was submitted to Ofgem. As part of the Development Groups' findings it was agreed that participants are not sufficiently commercially incentivised under the current regime to investigate, detect and prevent theft.

Furthermore it was agreed that where there are arrangements in place to mitigate the costs of investigating theft, the process is burdensome and does not adequately cover the costs incurred by participants in investigating theft, and in some cases does not cover the administrative costs associated with making a claim.

In their document titled 'Theft of Electricity and Gas – Next Steps – 06/05' dated 17<sup>th</sup> January 2005, Ofgem stated that;

“The principles behind the Reasonable Endeavours Scheme appear to be sound basis for these arrangements. Under the Reasonable Endeavours Scheme gas suppliers and GTs are currently able to recover gas charges and other defined costs where they have undertaken reasonable endeavours to recover these from the customer but have failed to do so.”

It is our belief that, while the current regime does provide a sound basis, the level of compensation available to shippers through the Reasonable Endeavours Scheme is insufficient to incentivise increased Shipper activity to identify theft.

Furthermore, the current regime provides a perverse incentive whereby Shippers who are actively engaged in the detection of theft are exposed to the full cost of the Energy they notify as stolen, often with little chance of recovering these costs from the end user.

Whilst the Reasonable Endeavours Incentive Scheme offers Suppliers the

opportunity to recover some of their costs in investigating theft, the level available can be lower than the administrative costs associated with making a claim.

Furthermore, the Reasonable Endeavours Incentive Scheme is operated outside of the Uniform Network Code arrangements, which we believe contributes to a lack of understanding and clarity, on the part of Shippers, around the process.

### Proposal

In order to provide adequate incentive, the level of compensation available to Shippers be extended to allow the Shipper reporting the Theft to recover a percentage of their energy costs.

Currently where there is little or no incentive to detect theft, 100% of the costs of stolen energy are borne by the RbD community until it is identified that the theft has taken place and reports this to the Transporter.

We propose that where a Shipper is able to meet the criteria of the current Reasonable Endeavours Incentive Scheme, as set out below, they will only be liable for the costs of [[50%]] of the total theft identified.

The remaining [50%] of the cost of the stolen energy will continue to be allocated to RbD.

The current Reasonable Endeavours Incentive Scheme operated by the Transporter's agent should be brought into the Uniform Network Code in order to give users clarity around both process and obligations.

Within Section [S] of the Uniform Network Code the following text be inserted;

Reasonable Endeavours Claim following detection of Theft.

- 1 In the case of an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Gas Act 1986 as amended 1995, a report of the investigation, including an estimate of the amount of gas taken illegally and supported by any appropriate evidence and statements from witnesses, has been presented to the police and a crime number requested.
- 2 In all cases, efforts have been made to determine the identity and whereabouts of the person, or a representative in the case of an organisation, with whom the supplier has a contract or deemed contract.

These efforts are to use where relevant, and not to the exclusion of any other source which the supplier might consider appropriate, information which the supplier has established:

- (i) from any contract in its possession and/or
- (ii) following enquiries which should be made by the supplier

to such local authorities, landlords or owners/occupiers of any neighbouring properties as may reasonably be able to assist.

**ADDITIONAL ACTIONS WHEN THE WHEREABOUTS OF THE PERSON IN (2) ARE KNOWN:**

- 3 The person with whom the supplier has a contract or deemed contract has been furnished with a demand for payment for the supplier's charges (that is the charges to which it is entitled, in respect of the supply of gas taken as mentioned in Standard Condition 24(3), including any sum to which it is entitled in connection with the taking of gas or by way of costs incurred in investigating or pursuing the matter). This requirement is irrespective of any action which the supplier might have taken either at the time of discovery of the illegal taking, or subsequently, to cut off the supply or to disconnect the premises of the person offending with whom the supplier has a contract or deemed contract.
- 4 Arrangements have been made available to the person identified in (3) above to make payment to the supplier in accordance with one or more of the methods identified in Conditions 10, 19(1)(c), 19(1)(d), and 19(1)(e) of the Standard Conditions of Gas Suppliers Licences. Such arrangements shall be designed so that the agreed sum will be recovered within a maximum period of 24 months from agreement of the arrangements. A sum less than the whole of the suppliers charges may be agreed where having due regard to the means available to the person (and the importance of securing that the suppliers charges are paid), this would not provide an opportunity for the person to avoid any part of the payment which could reasonably be made.
- 5 If no arrangements can be agreed under action (4) above or if such arrangements, having been agreed, have failed to result in completion of the agreed payments to the supplier, the supply to the person identified in action (3) above has been cut off, or the premises of the person have been disconnected, and so remain for a period of not less than 28 days, in either case in so far as the supplier has the power to do so.
- 6 Where an individual has become bankrupt or has had an interim order made in respect of his affairs or the company has gone into liquidation, administrative receivership or entered into a voluntary agreement, a claim has been filed with the official receiver, interim receiver, liquidator, administrative receiver as appropriate or, in the case of voluntary arrangements, with the nominee.

**Additional action to be taken in certain other cases of gas illegally taken:**

- 7 In cases where the person in 3 above, taking into account any gas taken illegally, is not a 'domestic user' as defined in section 15A(10) of the Act, civil proceedings have been issued and served to secure

payment for any amount due unless it can be demonstrated that there is good reason for not doing so.

**b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)**

Urgency not requested

**c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.**

We request that this proposal be referred to the Distribution Workstream for discussion and further development.

**2 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives**

Standard Special Condition A11.1 (a) the efficient and economic operation of the pipeline system to which this licence relates, by increasing the level of detection of theft across the network and ensuring that costs associated with previously unidentified theft are targeted correctly.

**3 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation**

If implemented this proposal would increase the level of detection of theft, thus reducing the total volume of gas currently misallocated or unaccounted for.

**4 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:**

**a) The implications for operation of the System:**

Increased system efficiency through greater accuracy in identifying true levels of consumption.

**b) The development and capital cost and operating cost implications:**

None Identified

**c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:**

**d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

None Identified

**5 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)**

None Identified

**6 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users**

None Identified

**7 The implications for Users of implementing the Modification Proposal, including:**

- a) **The administrative and operational implications (including impact upon manual processes and procedures)**
- b) **The development and capital cost and operating cost implications**
- c) **The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

**8 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)**

**9 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters**

**10 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 9 above**

**Advantages**

**Disadvantages**

**11 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)**

**12 Detail of all other representations received and considered by the Proposer**

**13 Any other matter the Proposer considers needs to be addressed**

**14 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal**

None Identified

**15 Comments on Suggested Text**

**16 Suggested Text**

**Code Concerned, sections and paragraphs**

Uniform Network Code

Transportation Principal Document

**Section(s)** S

**Proposer's Representative**

*Mitch Donnelly*

**Proposer**

*Chris Wright*