

Shipperless and Unregistered Sites Working Group

National Grid Distribution View in respect of Relevant Legal Rights and Responsibilities of Transporters

1. Background
 - 1.1 In November 2009, the Final Report for Uniform Network Code (UNC) Review Group 0245 recommended “the establishment of new processes by Transporters to proactively manage Shipperless sites” and “a review of shipperless sites scenarios to identify who should or might be subjected to retrospective charges associated with failure to confirm sites which are offtaking gas”.
 - 1.2 The processes currently applied by Transporters¹ in respect of Shipperless and Unregistered Sites² is operational in nature and is not subject to any UNC or other formal industry governance. Accordingly the nature and form of this process is determined by xoserve³ in consultation with the industry via the Shipperless and Unregistered Sites Working Group (SUSWiG). This forum is attended by various industry parties including Distribution Network Owners, Shippers, Suppliers and Meter Asset Managers.
 - 1.3 Since the issue of the Review Group 0245 report, the SUSWiG has been considering the root causes of the current population of Shipperless and Unregistered Sites and whether any changes should be made to the existing processes applied in respect of such, as recommended by Review Group 0245.
 - 1.4 At the meeting of the SUSWiG on 7 November 2010, Ofgem provided its view (see Appendix 1) of the rights and responsibilities of industry parties in respect of Shipperless and Unregistered Sites, specifically in the context of two key activities;
 - the ability to disconnect the consumer if it refuses to enter into a supply contract, and
 - the ability to charge for gas consumed prior to a supply contract being in place
 - 1.5 On 23 November 2010, Ofgem also issued a separate document in response to an action item (see Appendix 2) which provided Ofgem’s view in respect of two additional scenarios associated with Shipperless and Unregistered Sites.
 - 1.6 This document seeks to provide National Grid Distribution’s (NGDs) view in respect of the relevant legal rights and responsibilities of Transporters including those identified by Ofgem in its SUSWiG presentation material and action response.

2.0 Definitions

Unregistered Site

A Meter Point within the Supply Point Register that has never been registered by a shipper⁴.

Shipperless Site

A Meter Point within the Supply Point Register that has no current registered shipper, but previously had one⁵.

¹ ‘Transporter’ in this context refers to the ‘Large’ Transporters being National Grid Transmission, National Grid Distribution, Northern Gas Networks, Scotia Gas Networks and Wales & West Utilities)

² The respective definitions of ‘Shipperless’ and ‘Unregistered’ sites are as detailed within section 2.

³ xoserve is the Large Transporters’ agent and is responsible for the delivery of a number of regulatory and contractual obligations of these parties.

⁴ The definition used by xoserve in its management of Shipperless and Unregistered Sites.

⁵ See footnote 4, above.

Supply Point Register

The register of all Supply Meter Points, Supply Points and Supply Point Premises located on systems operated by the Large Transporters as required by Standard Special Condition A31(2)(a) of the their Licence and section G1.9.1 of the UNC Transportation Principal Document.

3.0 Procedure – Unregistered Sites

- 3.1 A new connection is made to a Transporter’s network by a Utility Infrastructure Provider (UIP) or by the Transporter itself. Where installed by a UIP, upon completion, pursuant to the contractual arrangements with the Transporter, the UIP issues a completion notice to the upstream Transporter. Subsequent to completion, a meter is installed by the customer itself or (upon the request of the customer) by a Supplier (who instructs a Meter Asset Manager). The consumer enters into a supply contract with a Supplier, which accordingly is able to levy ongoing supply and metering charges pursuant to this contractual arrangement.
- 3.2 Within 3 days of commencement of supply, the Supplier notifies the relevant Shipper that it will become the relevant Supplier. This is pursuant to Supplier Licence Condition 17.9: *“If the licensee becomes the Relevant Gas Supplier of premises, it must, no later than three days after becoming so, inform the Relevant Gas Shipper whether the premises are Domestic Premises or Non-Domestic Premises”*.
- 3.3 Not less than 14 business days prior to the point at which it will become the relevant Shipper, the Shipper notifies the Transporter in accordance with Section G of the Uniform Network Code. This is pursuant to Shipper Licence Condition 8(5): *“The licensee shall, in each case where it proposes to become the relevant shipper in respect of particular premises, give the relevant transporter confirmation that it will so become, in such manner as the transporter may reasonably require, not less than 14 business days (or any lesser period which may be permitted in the particular circumstances by or under the relevant transporter’s Network Code) in advance of the date on which it is to become the relevant shipper”*.
- 3.4 A Meter Point may be legitimately ‘Unregistered’ where the Meter Point is created in the Supply Point Register but it is not capable of offtaking gas.

4.0 Procedure – Shipperless Sites

- 4.1 A Supply Point may be legitimately ‘Shipperless’ where the previous shipper has submitted a Supply Point Withdrawal which has been made effective in accordance with the UNC⁶. Where the Supply Point Withdrawal is made effective by submitting an ‘Isolation’, the Shipper warrants that it has *“taken all reasonable steps to ensure that all work to cease the flow of gas has been carried out”*.⁷ To this extent, the ‘shipperless’ status is legitimate where the consumer does not offtake gas from the date of the Isolation.
- 4.2 Where a Shipper submits an Isolation (in absence of a Supply Point Withdrawal) and it subsequently becomes aware that gas is capable of being offtaken, it notifies the Transporter of this and the Transporter Re-establishes the Supply Point by removing the ‘Isolated’ status in the Supply Point Register⁸.
- 4.3 Where an Effective Supply Point Withdrawal has taken place and the meter remains physically connected to the Transporters system, in the event that gas is offtaken the Shipper will be liable for all relevant Transportation charges as if an Effective Supply Point Withdrawal had not occurred⁹.

⁶ UNC Transportation Principal Document section G3

⁷ UNC Transportation Principal Document section G3.5.5

⁸ UNC Transportation Principal Document section G3.7.2

⁹ UNC Transportation Principal Document section G3.7.5

5.0 Transporter Duties, Rights and Powers

5.1 This section covers Transporters' general obligations in respect of gas illegally taken and other rights and powers to address two particular areas, the ability to disconnect a supply and the ability to recover costs of gas illegally taken.

5.2 Duties

5.2.1 Under Licence condition 7(1)(a) of its Licence a Transporter has a duty to investigate certain defined situations where it appears that gas may be being taken illegally. The circumstances in question are taken from paragraph 9 of Schedule 2B to the Gas Act 1986 (as amended) [hereafter the 'Gas Code'] and are

(a) where a person has taken a supply of gas which is "*in the course of conveyance*" by the Transporter. Licence Condition 7(11) of the Transporter Licence states that it is a rebuttable presumption that where gas is taken at a point upstream of the outlet of the customer control valve on a service pipe, it is gas which is in the course of conveyance and where it is taken at some other point it is gas that "*has been conveyed*" to the premises. This would cover situations where a service pipe or main is 'teed into' so gas can be illegally off-taken. This would be an offence under paragraph 10 of the Gas Code¹⁰.

(b) where a person at a premises which have been reconnected in contravention of paragraph 11 of the Gas Code takes a supply other than pursuant to an actual or deemed supply contract.

5.2.2 A supply contract is deemed to exist¹¹ where a supplier supplies gas to a consumer otherwise than in pursuance of a contract, this being where a person takes a supply of gas without entering into a contract, the premises have previously been supplied by a gas supplier and the Transporter is conveying gas to the premises under an arrangement with a shipper or authorised person. In practice this is likely to occur where a new tenant takes a supply of gas in absence of a supply contract with a new supplier but the Shipper remains registered at the Supply Point within the Supply Point Register. In this case, the supplier who last supplied gas to the premises is deemed to be the appropriate supplier.

5.2.3 Under Licence condition 7(1)(b) of the Transporter's Licence, where an investigation (conducted as per paragraph 5.2.1 above) finds evidence that gas has been taken illegally in the circumstances described, the Transporter has a duty to use reasonable endeavours to attempt to recover the value of the gas taken, which is defined by paragraph 9(5) of the Gas Code as the amount that could reasonably expect to have been recovered under a deemed supply contract.

5.2.4 Each Transporter has a duty under paragraph 9(3) of the Gas Code to have a scheme for calculating how much gas was taken in the circumstances described in paragraph 5.2.1 above.

5.2.5 Each Transporter (and Shipper) has an obligation under section G1.9.8 of the UNC Transportation Principal Document to co-operate to ensure the accuracy of the Supply Point Register. In the context of Shipperless and Unregistered Sites, accuracy principally refers to registration by the relevant Shipper which itself is a function of the Supplier/Consumer relationship. To the extent that the Supply Point Register is required to reflect all relevant Supply Meter Points we believe that the Transporter

¹⁰ See section 5.3.3(c), below

¹¹ Gas Code para 8(1) and 8(2)

fulfils its obligations under G1.9.8 by creating the relevant Meter Point Reference Numbers within the Supply Point Register.

- 5.2.6 Ofgem has taken a view that Transporters have obligations to address Shipperless and Unregistered Sites pursuant to duties under Gas Act sections 9(1) and 9(1A) to maintain an efficient and economic pipeline system for the conveyance of gas and a duty and to facilitate competition in the supply of gas.
- 5.2.7 We are of the view that obligations in respect of the efficient and economic operation of the pipeline system are more directly referring to the physical pipeline network and would therefore question the obligations this imposes in respect of records within the Supply Point Register.
- 5.2.8 However, we concur that Shipperless and Unregistered Sites potentially contributes to the misallocation of Transportation and Energy costs between shippers and therefore Transporters should seek to optimise the processes applied to facilitate competition in the supply of gas.

5.3 Rights and Powers

5.3.1 Charging:

- (a) Paragraph 9 of the Gas Code provides an entitlement for Transporters to recover the value of gas taken illegally in the circumstances described in paragraph 5.2.1 above.

5.3.2 Entry:

- (a) Paragraph 23 of the Gas Code provides an entitlement for a Transporter to enter a consumer's premises for various purposes including the inspection of gas fittings or to ascertain the quantity of gas offtaken.
- (b) Paragraph 25 of the Gas Code provides an entitlement for a Transporter to enter a consumer's premises which has previously been disconnected (by a Transporter or Supplier) for the purposes of ascertaining whether the premises have been re-connected.
- (c) Paragraph 28 of the Gas Code imposes requirements on a Transporter seeking to exercise its rights of entry afforded by the Gas Code including ensuring that the person exercising the right is a fit and proper person, that the premises are left no less secure as a consequence of the entry and that obstruction of a person attempting to exercise the right of entry is guilty of an offence.
- (d) Entry (including by warrant) sought pursuant to the Rights of Entry (Gas and Electricity Boards) Act 1954 applies.

5.3.3 Disconnection:

- (a) Paragraph 24 of the Gas Code provides an entitlement for a Transporter to enter a premises for the purposes of disconnecting the premises where:
 - (i) a consumer ceases to require a gas supply; or
 - (ii) a consumer entering into occupation of a premises previously supplied with gas by a supplier does not take a supply of gas

- (b) Paragraph 18 of the Gas Code provides an entitlement for a Transporter to disconnect a premises where the consumer improperly uses or deals with the gas so as to interfere with the efficient conveyance gas by a Transporter
- (c) Paragraph 10 of the Gas Code provides an entitlement for a Transporter to disconnect a premises where a person intentionally or negligently causes or allows any gas fittings provided by a Transporter or Supplier to be damaged including alteration of the meter index or prevention of the meter from registering
- (d) Paragraph 11 of the Gas Code provides an entitlement for a Transporter to disconnect a premises where the premises has been reconnected in absence of the consent of the Transporter or the Supplier as appropriate
- (e) Paragraph 14 of the Gas Code provides an entitlement for a Transporter to disconnect a Larger Supply Point¹² premises where a shipper registration has ceased in the Supply Point Register and has not been replaced by a subsequent shipper registration
- (f) Where disconnection is actioned under Paragraphs 10, 11, 14 and 18 of the Gas Code, the Transporter is entitled to refuse to reconnect the consumer until the costs of the gas illegally taken are paid in addition to the costs of disconnection and reconnection¹³. This does not apply where disconnection is undertaken pursuant to Paragraph 24 of the Gas Code accordingly the Transporter has no entitlement to refuse to reconnect the consumer pursuant to Paragraph 19 of the Gas Code.

6.0 Scenarios

6.1 Except where stated otherwise, the following scenarios assume that a meter and service has been 'legitimately' installed in absence of damage any service pipe or gas fittings and that gas is being consumed¹⁴. In principle, consideration is given to the rights to disconnect and the rights and obligations to recover the value of any gas consumed.

6.2 Unregistered Site – Consumer Refuses to enter into a Supply Contract

6.2.1 From a principle perspective we agree that a consumer should be requested to enter into a supply contract and be afforded the opportunity to do so. However, where a consumer refuses to do so, consideration is required of the available measures to prevent the ongoing consumption of gas and the recovery of the value of gas illegally taken.

6.2.2 We believe that a Transporter does not have an express power to disconnect a premises not previously supplied with gas. This on the basis that the circumstances do not meet the requirements of paragraphs 24 (the consumer requires and is consuming the gas), 10 (no damage has been caused to the gas fittings), 11 (no unauthorised reconnection has taken place) or 14 (there is no prior Shipper registration in the Supply Point Register) of the Gas Code.

¹² As per UNC Transportation Principal Document section A4.2.2 "a Supply Point in respect of which the Annual Quantity is greater than 73,200kWh (2,500 therms)".

¹³ Gas Code para 19

¹⁴ xoserve is not able to conclusively determine the physical circumstances of site (ie: whether a meter is physically installed or whether gas is being consumed). Invariably, a number of the duties, rights and powers of Transporters under the Gas Act and Licence are contingent on gas being consumed "improperly" or "illegally" and hence this is referred to at the appropriate point in this paper.

- 6.2.3 We agree that taking gas without a supply contract (where the consumer is fully aware of the requirement and is capable of entering into such an arrangement) is arguably “improper use” for the purposes of paragraph 18 of the Gas Code. We note that both Ofgem and British Gas Trading have expressed views in support of this interpretation however we maintain concerns that this provision of the Gas Code was not intended to cover this problem. As a consequence, we believe that there would be merit in reflecting an express power in the Gas Code (potentially paragraph 24) as an alternative to utilisation of paragraph 18.
- 6.2.4 Prior to exercising any rights to disconnect in these circumstances, we believe that it is imperative for the Transporter to have certainty that no supply contract is in place. To this extent, we believe that it is reasonable that any prospective operational ‘Shipperless and Unregistered Sites’ procedure (operated by xoserve) includes the requirement on shippers to respond to requests to provide confirmation of whether they are aware of the existence of a supply contract with a consumer. This would be required prior to Transporter consideration of disconnection activity at the relevant premises.
- 6.2.5 In respect of the ability to recover the costs of any gas consumed, we believe it is arguable this is a case where the presumption contained within the definition of gas “in the course of conveyance”¹⁵ in Licence Condition 7(11) could be rebutted. To this extent, where there is no actual or deemed supply contract in place, *any* gas consumed at the relevant Supply Point could be treated as gas taken in the course of conveyance. Accordingly, the Transporter would be able to recover the value of the gas taken pursuant to paragraph 9(1) of the Gas Code.
- 6.2.6 In order to provide certainty, we would welcome clarification within the Licence that where there is no actual or deemed supply contract, any gas extracted from the Transporter’s network (including where extracted downstream of the Emergency Control Valve) is illegally taken whilst “in the course of conveyance”.
- 6.3 Unregistered Site – ‘Express’ Supply Contract in Place (Shipper/Supplier failure to register Supply Point)
- 6.3.1 In this scenario, we do not believe that it is appropriate for the Transporter to disconnect the premises or seek to recover the value of the gas consumed. This is on the basis that the consumer has entered into a supply contract in good faith and should not be inconvenienced by omissions elsewhere in the market arrangements.
- 6.3.2 More importantly, we do not believe that the Transporter would have the *right* to recover the value of the gas taken as conferred by paragraph 9 of the Gas Code. The supply in this case has not been illegally reconnected (Gas Code Paragraph 9(2)) and we do not believe that gas has been taken in the course of conveyance (Gas Code Paragraph 9(1))¹⁶.
- 6.3.3 Equally, in respect of disconnection, we do not believe that the circumstances meet the requirements of paragraphs 24 (the consumer requires and is consuming the gas), 10 (no damage has been caused to the gas fittings), 11 (no unauthorised reconnection has taken place) or 14 (there is no prior Shipper registration in the Supply Point Register) of the Gas Code.
- 6.3.4 In this case we believe it would also be inappropriate to utilise paragraph 18 of the Gas Code to disconnect supply in light of the fact that the consumer has willingly entered into a supply contract in good faith. We certainly believe this was not the

¹⁵ See section 5.2.1, above.

¹⁶ See section 6.2.6, above.

scenario envisaged to be addressed by this provision of the Gas Code and further, believe it would be detrimental to the reputation of both the relevant Transporter and the wider industry if such actions were taken.

6.3.5 We believe that in this scenario, the relevant Supplier and relevant Shipper should act in accordance with their respective licences¹⁷ to ensure that the Supply Point is appropriately registered in the Supply Point Register. Upon such registration we note that the provisions of UNC Transportation Principal Document G7.3.7 would apply whereby the shipper would be treated as the registered shipper from the date of submission of the Supply Point Confirmation (or the Meter Fix date if notice of such was submitted by the same Shipper).

6.3.6 We also believe that in this case, the Shipper should also pay the Transporter's reasonable costs in investigating the matter.

6.4 Shipperless Site - Previous Meter in situ

6.4.1 Where Effective Supply Point Withdrawal has occurred but the original meter remains connected to the network and subsequently gas continues to be offtaken, the provisions of the UNC¹⁸ would apply. Specifically, the Shipper remains liable for the Transportation charges as if the Effective Supply Point Withdrawal had not occurred. The Shipper is also required to ensure that the meter is disconnected within 12 months of the date of Effective Supply Point Withdrawal, and if this is not undertaken, the Transporter will disable the flow of gas and levy a charge to the relevant Shipper¹⁹.

6.4.2 A deemed supply contract would apply where the shipper registration remains in the Supply Point Register thus meeting the requirements of the Gas Code paragraph 8. Given that the effect of section G3.7.5 of the UNC Transportation Principal Document is to levy Transportation Charges as if Effective Supply Point Withdrawal had not occurred we believe that the Shipper's registration effectively remains in place and therefore a deemed supply contract applies. Accordingly, the UNC could benefit from clarification in respect of the Shippers registration in the Supply Point Register in these circumstances.

6.4.3 In light of the presence of a deemed contract we believe that it would be inappropriate for the Transporter to seek to disconnect the premises or to seek payment for the gas consumed for the reasons outlined in section 6.3 above. We believe these reasons remain valid despite the 'deemed' nature of the supply contract.

6.5 Shipperless Site - Other Meter in situ

6.5.1 We note that the Network Code Modification²⁰ which introduced the G3.7.5 provisions did not contemplate this scenario and we therefore do not believe these terms would permit the Transporter to levy Transportation charges to the relevant shipper where gas is being consumed via a different meter to that in place at the point of Isolation.

6.5.2 Therefore in order to levy Transportation Charges in these circumstances to the relevant shipper we believe, a Modification to the UNC would be required. If this change was implemented the Shipper's registration would effectively remain in

¹⁷ See section 3.2 and 3.3, above

¹⁸ UNC Transportation Principal Document G3.7.5. See section 4.3, above

¹⁹ UNC Transportation Principal Document G3.8.1

²⁰ Network Code Modification 0675, implemented 12 July 2004.

place and therefore the principles identified in sections 6.4.2 and 6.4.3, above would apply.

6.5.3 However, our view is that it would be inappropriate to reinstate the previous Shipper's registration in these circumstances as in this case the withdrawing shipper will have removed the original meter and thus undertaken additional steps to ensure that gas is not able to be offtaken. If this were the case and there is no registration in place within the Supply Point Register, there cannot be a deemed supply contract in place and therefore the supplier would be unable to recover any supply charges.

6.5.4 Therefore, in this scenario, we believe that the Transporter is able to disconnect the premises pursuant to paragraph 11 of the Gas Code²¹ and is entitled to recover the value of the gas on the basis that it has been illegally taken whilst in the course of conveyance²².

7.0 Governance

7.1 We acknowledge the comments of a number of members of the SUSWiG that the procedure operated by xoserve should be subject to formal industry governance. We recognise the benefits this would provide and as such would suggest consideration of the following requirements:

- requirement for shippers to confirm whether a supply contract is in place or otherwise prior to Transporter consideration of disconnection;
- requirement for reinstatement of a Shipper's registration in the Supply Point Register where the original meter remains connected to the network and gas is being offtaken (UNC Transportation Principal Document section G3.7.5).

7.2 NGD is of the view that given the matters now being considered by the SUSWiG and the potential impacts on the UNC, these issues should now be addressed under UNC governance and therefore suggest that a topic is raised at the Distribution Workstream to develop any proposed changes.

8.0 Funding

8.1 We welcome Ofgem's clarification that any activities undertaken by Transporter to address the Shipperless and Unregistered population of sites (including disconnection) would be classed as 'investigations' undertaken pursuant to Licence Condition 7(1). Accordingly, the associated costs and revenue would be treated in accordance with Licence Condition 7(3) and the Transporter would therefore acquire no financial benefit nor suffer any financial loss from the taking of the gas and compliance with Licence Condition 7(1).

²¹ See section 5.3.3, above

²² See sections 5.3.1 and 6.2.6, above

Appendix 1



Disclaimer

- This presentation is intended to facilitate discussion and further debate
- The contents of this presentation should not be taken to be a legally binding view

Contents

- Definitions
- Ofgem views on Shipperless sites
- Ofgem views on Unregistered sites
- Questions and next steps

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Definition

- What is a Shipperless site:
 - A supply point that has no current registered shipper but previously had one, and for which it has been established that gas is being consumed through a meter
- What is an Unregistered site:
 - A supply point that has never been registered by a shipper but where there is a meter fitted and it has been established that gas is being consumed through that meter

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Treatment of customers

- Two main issues:
 - Ability to disconnect the consumer if they refuse to enter into a contract
 - Ability to charge for gas consumed prior to a contract being in place

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Shipperless sites

- Deemed contract applies where either:
 - A supplier is supplying gas otherwise in pursuance of a contract (Gas Act, Schedule 2B para 8(1)), or
 - **There is a registered shipper and previous supplier (Gas Act, Schedule 2B para 8(2))**
- UNC retains the charging liability for shippers that do not withdraw from a site properly (UNC Section G)
 - Is the shipper still a “registered shipper”?
 - Potential to amend UNC to clarify if necessary
- Charging under normal deemed contract provisions and disconnection dealt with under suppliers’ debt and disconnection provisions

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Unregistered sites

- If there is no registered shipper or has never been a supplier, there is no associated supplier charging and disconnection route
- Policy principles:
 - Customer should be requested to sign up with a supplier and be given the opportunity to do so
 - Only disconnect when clear that no contract in place, and customer refuses to sign up with a supplier after an appropriate period of opportunity
 - Customers should be charged for gas consumed

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Unregistered Sites – GT requirements

- GTs arguably have obligations to tackle unregistered sites:
 - Requirement to develop and maintain an efficient and economic pipe-line system for the conveyance of gas (Gas Act s.9(1))
 - Duty to facilitate competition in the supply of gas (Gas Act s.9(1A))
 - Obligation to investigate where a supply may be being taken in the course of conveyance and recover value of the gas taken (GT SLC7(1))
- Not all one way!
 - Shippers and GTs must cooperate to ensure that the Supply Point Register is at all times as accurate as is possible (UNC section G1.9.8)

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Unregistered Sites – Disconnection

- GTs have powers to disconnect consumers who improperly use or deal with gas “so as to interfere with the efficient conveyance of gas by the transporter” (Gas Act, Sch. 2B, para.18)
- GTs have previously questioned whether this power is applicable to this situation
- Only disconnect where no supply contract in place (even if not registered on central systems)
 - Assumption that no supplier contract for remainder of slides

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Unregistered Sites – Charging

- GTs have powers to charge for the value of gas where “any person takes a supply of gas which is in the course of being conveyed” (Gas Act, Sch. 2B, para.9)
 - Conveyance is considered to have a broad meaning (i.e. gas is no longer conveyed when it has been consumed)
 - Policy view that when there is an applicable supplier, the supplier should make charges for the gas consumed
 - For unregistered sites there is no supplier to levy charges and the GT should therefore fill this void

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Unregistered sites – potential options

- For discussion, we have identified three potential options to address charging for the site before it has been registered:
 - Option 1: Use of current arrangements
 - Option 2: Supplier of First Resort (SoFR)
 - Option 3: Changes to primary legislation
- Anticipate that legislators would be unlikely to amend primary legislation to address issue without options 1 and 2 being exhausted first and all reasonable efforts being made to address route causes

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Unregistered Sites

Option 1: Use of current arrangements

- Scenario 1 – Customer agrees to sign up with a new supplier
 - GT charges for gas previously consumed (Gas Act, Sch. 2B, para.9(1))
 - Disconnection is not necessary
- Scenario 2 – Customer does not sign up with a new supplier
 - GTs have power to disconnect (Gas Act, Sch. 2B, para.18)
 - GTs have requirement to reconnect only if matter has been remedied (Gas Act, Sch. 2B, para.19) – presumption of two conditions to be met:
 - Customer signed up with a Supplier
 - Charges/value of gas have been paid

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Option 1: Further issues

- Funding for GT investigations/disconnections and use of recovered revenue
 - GTs required to investigate and recover value of gas from “any person [that] takes a supply of gas which is in the course of being conveyed” (GT SLC 7(1))
 - Arrangements in place to ensure that GTs are revenue neutral in terms of (amongst other things) the investigation costs and recovered monies from the customer (GT SLC 7(3))
 - “Rebuttable presumptions” that gas taken upstream of ECV is in the course of conveyance (GT SLC 7(11))
 - Rebutted where no supplier in place
- When should a GT disconnect?
- Treatment of vulnerable customers?

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Option 2: SoFR

- Introduce a SoFR, to which all the Unregistered sites would be allocated
- A deemed contract would be in place between the SoFR and the customer of an Unregistered site (Gas Act, Sch. 2B, para.8(1))
- Under these provisions it would be possible for the SoFR to charge the customer for the value of gas under a deemed contract
 - But not retrospectively for period before SoFR mechanism implemented
- Other considerations to resolve e.g. how to choosing the SoFR

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Summary

- Shipperless sites
 - Existing route for suppliers to charge/disconnect customers
 - Could be clarified (if needed) by UNC Modification
- Unregistered sites
 - GT power to disconnect
 - GT rights to recover backdated charges
 - Application of GT SLC 7 to associated costs and recovered charges
 - Potential option to allow suppliers to recover backdated charges e.g. SoFR

Appendix 2

Unregistered and Shipperless sites - actions from meeting 3 Nov 2010

1.1. Following the presentation given by Ofgem at the 3 November meeting I took a number of actions to provide additional comments on the application of the legal framework to shipperless and unregistered sites. As with the caveat set out in the presentation, these responses should not be taken to be legally binding views and parties should seek their own legal advice.

1.2. In addition, we have given further thought to our definition of unregistered sites and the distinction between theft in conveyance. Our view is that an unregistered site occurs where there is not a shipper registered for the site and a connection has been made in accordance with the agreed industry arrangements (e.g. GIRS) and has been notified to the GT. We consider that instances where connection has been made outside of the agreed industry arrangements and without the agreement of the GT are more likely to be considered under Schedule 2B paragraph 10(a), ie where there has been damage to the pipeline. We have therefore not considered this second scenario in our responses below.

Action 1: Views on responsibilities and rights to charge and disconnect unregistered sites where a supplier has a contract with a customer at the premises

1.3. In these instances the site is not registered to a shipper or supplier on the central systems. For clarity, this differs from the scenario considered in the 3 November presentation for unregistered sites, where there was no supply contract with a customer.

1.4. In summary, we consider that, if this circumstance is not specifically catered for in industry arrangements²³, the supplier does not have title to the gas as there is no shipper responsible for that site.

1.5. If title to the gas is not dealt with under industry arrangements then we note that this could potentially give rise to liability under criminal and customer protection legislation. This may include legislation specifically enforceable by Ofgem under Part 8 of the Enterprise Act²⁴.

1.6. We consider that the provisions generally set out in the presentation on 3 November (under Unregistered Sites) for GTs to charge the customer for the gas consumed and disconnect where satisfactory shipper/supplier arrangements are not put in place, will apply in this scenario. Given the obligations in the Gas Act and the licence referred to in the presentation, our view is that GTs should be managing the process to a satisfactory conclusion.

1.7. We further consider that it would be beneficial to give the contracted supplier an opportunity to correct the situation by arranging with a shipper to correctly confirm the site and give the customer an opportunity to sign up with another supplier if this does not occur.

1.8. We consider that, if a supplier has received payment for supply charges (including standing charges) from the customer where there has never been a shipper registered in the central systems for that meter point, or where there are no specific industry arrangements that cater for this, a supplier will not have title to the gas and all such charges should be returned to the customer. These

²³ The provisions under Section G 7.3.3 and 7.3.7 may be relevant here. These provisions prohibit the offtake of gas at a New Supply Meter Point until the First Supply Point Registration Date subject to certain exemptions which, for new sites, provide for offtake whilst the Supply Point Confirmation is being processed.

²⁴ For example, where there is a breach of an implied term in a contract to the effect that a trader has the title/right to sell the gas. See in particular, Section 12 of the Sale of Goods Act 1979, Section 2 of the Supply of Goods and Services Act 1982 and Section 6(1) and 7(3A) of the Unfair Contract Terms Act 1977.

charges can then be used to pay the GT in respect of gas consumed during the period before a shipper had been registered or is liable for charges ('the unregistered period'). Further, in the event that the charges payable to the GT in respect of the unregistered period exceed the amount originally charged by the supplier and paid by the customer (in respect of the same period of time and amount of consumption), we would expect the supplier to compensate the customer for any such additional payments.

Additional points

1.9. We note that both SLC 3 and SLC 8 of the gas shippers' licence may be relevant where unregistered sites exist.

1.10. Depending on the nature and terms of the commercial arrangements between a shipper and supplier, in order to comply with paragraphs 1, 2 and 3 of SLC 3²⁵ it may be necessary for the shipper to ensure that it is fully aware of the total number of sites which are being supplied in order to ensure that this correlates with the number of registered sites for which it is acting as the relevant shipper.

1.11. Further, in circumstances where the shipper has knowledge of a site which would be within the scope of its commercial arrangements with a supplier, we note that paragraph 5 of SLC 8 requires the shipper to give the relevant transporter confirmation of its intention to become the relevant shipper within a specified period in advance of the date those shipping arrangement will commence. Therefore, in light of the spirit of this licence condition (and without prejudice to any potential breach), in circumstances where a shipper becomes aware of an unregistered site, we would expect the shipper to take immediate steps to notify the relevant transporter and ensure that the site is correctly registered as soon as possible.

Action 2: Which party has the right to charge and disconnect a shipperless site where the meter has been exchanged

1.12. UNC Section G 3.2.2 ensures that a shipper remains liable for Supply Point Transportation Charges for as long as Supply Point Withdrawal has not become effective.

1.13. UNC Section G 3.7.5 sets out that if the Supply Meter continues to remain physically connected to a system after isolation and withdrawal, then the shipper will continue to be liable for charges for that Supply Meter Point.

1.14. A view was taken at the 3 November meeting that these provisions provide for a shipper to be in place when a site has not been correctly withdrawn and isolated. In these circumstances a deemed contract between the customer and the appropriate supplier would apply.

1.15. As requested, we have given further thought to whether a deemed contract will apply in circumstances where a sites has not been correctly withdrawn and isolated and the meter in situ has been exchanged.

1.16. UNC Section M 1.2.2 defines a Supply Meter at a Supply Meter Point. This definition appears to provide for the Supply Meter to be any meter that is installed at the site, including where it has been exchanged.

1.17. We therefore consider that, where there has been a meter exchange at a shipperless site, it will still be the shipper and supplier last registered to that site that will be responsible for the associated site charges and which will have a deemed contract with the customer.

Action 3: Ability of GT to recover costs of investigation and disconnection/ reconnection from the customer

²⁵ These provisions place obligations on the shipper in respect of its use of the GT's pipe-line system, including the arrangements set out in the Network Code.

1.18. We note that GT SLC7 requires a GT to investigate and use reasonable endeavours to recover the value of the gas taken in the course of conveyance. It is our view that this requires GTs to take action in relation to unregistered sites.

1.19. We note that SLC7 does not provide an explicit requirement on the GT to seek to recover the value of the investigation or the costs of any disconnection or reconnection from the customer although there is a provision under SLC7(3) for these unrecovered costs to be passed through under the price control arrangements.

1.20. Schedule 2B, paragraph 19 of the Gas Act provides for the GT to refuse to reconnect a site in certain circumstances. We consider that, where a customer's actions have resulted in a GT disconnecting a site under Schedule 2B paragraph 10(1) for example when they have refused to enter into contractual arrangements with a supplier after due process has been followed, the GT may be able to refuse to reconnect the site until satisfactory arrangements for repaying the costs of disconnection and reconnection and any reasonable costs associated with investigating the customer's actions have been made. We note that paragraph 10(1) is unlikely to be relevant where the unregistered site was not caused or sought to be continued by the actions of the customer.