

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 arrangements¹, 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 Act².

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

¹ 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.

² 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.

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 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 3³ 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

³ 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.

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**

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.