

Energy Theft Code of Practice

UR Second Consultation

PNGL Response

7th April 2017

Introduction

Phoenix Natural Gas Ltd. (“**PNGL**”) welcomes the opportunity to respond to the Utility Regulator’s (“**UR**”) second consultation on its proposals for an Energy Theft Code of Practice (“**CoP**”).

As recognised by UR, energy theft can have serious safety consequences and it is therefore critical that the information provided by PNGL in this response is treated as confidential and is not published or disseminated without the prior approval of PNGL.

As requested by UR in paragraph 1.28 of the Consultation, we have not reiterated comments made in response to the initial consultation on the basis that UR has given these due consideration in developing this February 2017 Consultation.

Scope of the Energy Theft Code of Practice

We note in paragraph 2.24 of the Consultation that disconnection and reconnection will not be considered under the CoP. PNGL would be keen to explore this rationale further with UR.

i. Reconnection to the Gas Network

A reconnection may be requested following disconnection for multiple incidents of meter tampering and / or supply interference. Any Distribution Network Operator (“**DNO**”) policy which details how such reconnection requests may be facilitated must centre on the over-riding importance of safety of the natural gas network in Northern Ireland. PNGL therefore agrees that it would be more appropriate to deal with reconnections outside the CoP and would welcome discussion with UR on where this is best addressed within the regulatory framework.

Assuming that reconnection is to be addressed separately it is essential that, for transparency, UR states in the CoP that it excludes reconnections alongside a signpost to where reconnections are addressed. It is therefore necessary that the workstream for reconnections is developed and delivered in line with the CoP delivery timescales. This approach will avoid misinterpretation of the CoP and supporting industry procedures by third parties going forward.

The remainder of this response on the scope of the CoP does not therefore apply to the reconnection of a property to the network following disconnection.

ii. Disconnection from the Gas Network

Although it could be argued that the existing NI legal and regulatory framework surrounding the gas industry already deals effectively with the rights and obligations for disconnecting premises from the gas network, PNGL believes that the CoP cannot ignore this. We have therefore concluded that the current drafting falls short in terms of disconnection.

The current objective of the CoP requires Gas Suppliers and DNOs to put in place procedures for the:

1. Prevention of Theft of Gas;
2. Detection of Theft of Gas; and
3. Investigation of Theft of Gas.

However the CoP also requires licensees to provide, at paragraphs 5.13 to 5.22 “*Outcome of Investigation into Theft of Gas*”, indication of what happens if the investigation concludes that theft of gas has occurred including if the property should be disconnected from the network.

Disconnection by a DNO

Where it is determined that meter tampering and / or supply interference has taken place at a property on more than one occasion, which includes instances where stolen meters are present, then from a safety perspective this property **must** be disconnected from the network i.e. a “permanent disconnection” is undertaken. Therefore PNGL believes that the scope of the CoP and / or its supporting procedures **must** recognise this safety critical issue by documenting the treatment of multiple meter tampering and / or supply interference events **up to the point of disconnection from the network**.

Where theft of gas is confirmed, paragraph 5.29 of the Consultation and paragraph 5.16 of the CoP includes a requirement on PNGL to identify the customer “responsible” for the theft. PNGL believe it is important to emphasise that “responsibility” for the criminal act of theft can only be determined in a criminal court and therefore its use in the context of the CoP is inappropriate. For the avoidance of doubt, PNGL cannot identify the person responsible for the theft of gas; however the gas user at the relevant time is, and should remain, liable for the associated costs until such time as restitution has been made. The costs associated with the theft of gas are levied by the Gas Supplier to their consumer; this is known as civil liability. Where information obtained by PNGL provides evidence on responsibility for the criminal act, this is presented to the PSNI. Where the PSNI determines it has sufficient evidence to identify a suspect, only a Court can conclude who is convicted of a criminal offence. The wording in paragraph 5.29 of the Consultation and paragraph 5.16 of the CoP should therefore reflect “liability” and not “responsibility”.

Disconnection by a Gas Supplier

It should be noted that disconnection may also be undertaken at the request of a Gas Supplier for non-payment of debt where the consumer will not accept liability and has failed to make restitution for the theft of gas.

Summary

In summary, as disconnection from the network is a potential outcome of investigations, PNGL recommend that the CoP and / or its supporting procedures address the treatment of meter and / or supply tampering events **up to the point of disconnection from the network**.

The procedures contained in paragraph 1.1 of the CoP must therefore be extended to include:

1. Prevention of Theft of Gas;
2. Detection of Theft of Gas;
3. Investigation of Theft of Gas; and
4. Outcome of the investigation of Theft of Gas.

This approach will **ensure transparency and provide clarity of the process involved**.

Restitution

As UR is aware, where it is determined that meter tampering and / or supply interference has taken place at a property, the consumer will be required to pay restitution to their Gas Supplier for the stolen gas. UR's proposed Principle 2 (Costs) of the eight principles underpinning the CoP contained in section 2.1 of the CoP should clarify that a liable consumer will be required to pay restitution to their Gas Supplier for the stolen gas.

As PNGL do not levy any charges directly on the consumer for the stolen gas costs, a similar clarification should be included in paragraphs 5.19 and 5.20 of the CoP by changing the word "licensee" to "Gas Supplier".

Secondly we believe that the CoP should actively encourage Gas Suppliers to seek restitution and for Gas Suppliers to apply a consistent approach in seeking such restitution to ensure the equitable treatment of consumers.

Vulnerability

i. Equitable Treatment of Consumers

The CoP must not dilute the over-riding importance of safety of the natural gas network in Northern Ireland and to ensure that this is the case it is essential that a consistent and equitable process is applied to the treatment of customers when dealing with energy theft. With this in mind PNGL has concluded that the current drafting of the Consultation and the CoP is confusing.

PNGL welcome UR's indication in paragraph 2.21 of the Consultation that if a vulnerable customer has stolen gas they should bear the costs of theft and pay back what they owe in the same way that any other customer would. It is however essential that, for transparency, UR states in the CoP that this concept of restitution applies to **ALL** consumers i.e.

"If a customer has stolen electricity or gas they should pay back the restitution and also face the possibility of a criminal prosecution."

PNGL welcomes this concept of restitution by UR. This concept, which correctly exhibits an equitable approach to dealing with energy theft, must also be extended to include the equitable treatment of that customer when multiple instances of meter tampering and / or supply interference are identified at a property occupied by them. UR's proposed principles underpinning the CoP do not however reflect this equitable approach.

Although it may seem reasonable to consider the methods of communicating with a vulnerable consumer in an energy theft event, we disagree that a vulnerable consumer who has stolen gas and shown complete disregard for the safety of other persons in their property or in neighbouring properties should be treated more favourably than consumers who pay for the energy they use and respect the integrity of the gas network. UR will be aware of the Household Alert leaflet distributed by Gas Suppliers which provides consumers with information of organisations who can offer advice and support. PNGL also leaves this leaflet at **ALL** properties disconnected from the network for meter tampering and / or supply interference where there is no registered Gas Supplier to ensure that **ALL** consumers may benefit from the advice. It is this type of communication applicable to **ALL** consumers which should be encouraged and form part of the CoP and industry procedures development.

Secondly we disagree that the consumer liable for energy theft should be treated more favourably if a "vulnerable" consumer occupies the same premises. For example if a person of pensionable age lives with someone who does not meet the current vulnerability criteria, the DNO and Gas Supplier licences do not provide for any special arrangements for such consumers. Therefore the requirement to provide special services for customers involved in meter tampering and / or supply interference not only feels morally wrong but this variance in approach may be seen as a breach of Section 75 of the Northern Ireland Act 1998.

Furthermore the requirement to assess vulnerability on a case-by-case basis is fraught with subjectivity, is resource intensive and must be removed.

It should be noted that PNGL has a responsibility under the Health and Safety at Work Order (NI) 1978 “...to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.”¹

This primary legislation places a duty of care on PNGL to others and we therefore disagree that greater importance can be placed on the vulnerability of a person occupying a property where meter tampering and / or supply interference has been identified, than those persons in neighbouring properties.

PNGL’s approach to meter tampering and / or supply interference has been developed on the basis of a fair and equitable treatment of consumers when investigating energy theft events; this must be industry’s approach going forward.

ii. Proposed Solution – Provision of heating facilities

For clarity PNGL will provide under Condition 2.8.4 of its Licence, in so far as is reasonably practicable, heating facilities to qualifying consumers where their premises has been disconnected, **through no fault of their own**, for the purpose of averting danger to life or property. In this instance emergency disconnection is a **short-term** temporary measure and a small 2 kW electric heater is provided until PNGL is able to restore the supply of gas to the premises. These heaters are not designed for long-term use and therefore the suggestion that PNGL provides such a heater to customers who have been disconnected from the network for meter tampering and / or supply interference, which could be for a considerable period of time, often years, is inappropriate and impracticable. As already noted, the Consultation advises that disconnection will not be considered under the CoP. The proposal that PNGL provides an electric heater to vulnerable customers disconnected from the network for multiple meter tampering and / or supply interference incidents is also therefore confusing as this is area is considered outside of the scope of the CoP.

Costs of introducing the CoP

i. Utility Costs (Preparation of the CoP)

PNGL disagrees with UR’s claims at paragraph 2.35 of the Consultation that introduction of the CoP (i) will not lead to any additional costs; and (ii) could in fact reduce overall costs.

Each DNO must deliver on the requirements of the CoP; there is no streamlining of responsibilities or procedures, the CoP will simply ensure a consistent approach to dealing with energy theft. Each DNO will still have to independently manage energy theft to ensure the safety and integrity of its network

¹ General duties of employers and self-employed to persons other than their employees

is maintained. PNGL does not therefore foresee how the introduction of the CoP could reduce costs. It should be noted that PNGL's approach to dealing with meter tampering and / or supply interference has been to embed many of the required processes within its routine operations and therefore utilising the resources within its core operations. This approach has ensured that PNGL's costs, which ultimately are passed through to the liable consumer, are minimised. Any requirement to undertake meter tampering and / or supply interference activities over and above current approach will result in increased costs. Drafting of the gas and indeed the electricity procedures will involve key personnel across the utilities, particularly for the DNO who takes on the overall co-ordinator role in gas. Legal advice will also be required in drafting the procedures. PNGL therefore foresees an initial increase in core costs to facilitate the drafting of the procedures.

ii. Utility Costs (Operation of the CoP)

Ongoing costs may also be impacted e.g. paragraph 3.3 of the CoP requires DNOs and Gas Suppliers (i) to proactively engage with and educate consumers, the general public and staff on the dangers and consequences of theft of gas and interference with gas equipment; and (ii) to publicise the reporting mechanism for reports of any suspected theft, or damaged equipment to the relevant licensee. PNGL's ability to educate consumers and to publicise the reporting mechanisms is limited by its GD17 Final Determination given that no such costs have been allowed. PNGL believes however that in practice licensees should be responsible for educating CCNI so that CCNI can educate consumers as part of its current media campaign. PNGL is actively involved in this working group and supports the work undertaken by CCNI to educate consumers in an effort to mitigate energy theft.

We also note that paragraph 4.3 of the CoP should be amended to clarify that it is the responsibility of each DNO and each Gas Supplier to train their own operatives.

It should be noted that PNGL already provides meter training, which includes methods to identify potential meter tampering and / or supply interference, to both its own operatives and to Gas Supplier representatives at the point of market entry.

PSNI requirements

We welcome the PSNI's willingness to assist the gas industry in dealing with energy theft. The relevant PNGL requirements listed by the PSNI in paragraph 2.101 of the Consultation to support the effective detection and investigation of crime are deliverable. However, we would welcome a reciprocal process from the PSNI in its dealings with the industry participants e.g. a single point of contact, timely responses.

Access to Gas Asset

PNGL notes the exception added to paragraph 5.4 of the CoP in relation to site visits by DNOs to inspect their equipment and associated installation:

*“...if the DNO cannot gain access to the relevant gas equipment on the first site visit, the DNO must make at least one other site visit to the premises to attempt to gain access, **except where a second or subsequent visit would represent a safety concern.**”*

However the requirements for PNGL, as a gas conveyor, obtaining a warrant are already delivered in primary legislation, namely the Gas Order (Northern Ireland) Order 1996 and the Energy Act (Northern Ireland) 2011. It is sufficient to have attempted to remove / exchange a meter where reasonable grounds of suspicion of meter tampering exist, without warrant. This forms part of the sworn information to the Court i.e. that further attempts would defeat the purpose or if first visit entry was refused.

PNGL has to work to primary legislation in obtaining a warrant and the CoP must be aligned with its statutory obligations. The current drafting does not achieve this. It may therefore be more prudent for the CoP to require licensees to have in place a separate policy for obtaining a warrant to avoid misinterpretation / confusion of licensees' statutory obligations. This requirement should be extended to Gas Suppliers who may seek a warrant to enter a premise to read or inspect a meter; in this case it may be considered good practice to make more than one attempt to visit without warrant unless entry was refused.

Information Sharing

Sharing of information between PNGL and the Gas Suppliers is a key element to prevent, detect and investigate theft of gas and meter tampering and / or supply interference and should be considered mandatory to achieve the principles of the CoP. The Data Protection Act 1998 covers the sharing of personal information and exemptions. Consideration should be given to sharing 'at risk' sites across both industry networks. The information should be anonymised and relate only to the findings of the network's equipment which has been compromised and if a criminal investigation is commenced, the investigatory authority may request the disclosure of personal data from the data controller of the conveyor or supplier holding the relevant personal information.

PNGL would highlight that based on the proposed scope of the CoP communications are between the Gas Supplier and the consumer, not between the DNO and the consumer. Paragraphs 5.12 and 5.18, which detail the information to be provided to consumers by licensees during an investigation and when theft of gas is confirmed respectively, should be amended accordingly.

PNGL agrees with the principle of paragraph 4.4 of the CoP in that Gas Suppliers should analyse energy usage to identify any potential instances of theft of gas. However PNGL is concerned that it is

not resourced to investigate a large number of SMPs if Gas Suppliers undertake reviews at set large intervals of time e.g. an annual review of all prepayment meter transactions. It should also be noted that irregular energy usage patterns do not always indicate meter tampering and / or supply interference and this activity should form part of the Gas Supplier investigation into suspected energy theft. PNGL would suggest that this should be an ongoing requirement for Gas Suppliers.

Timelines

The timelines for delivery of the CoP and the industry procedures are confusing. Paragraph 3.27 of the Consultation intends the licence modification will become effective by 31 March 2018 but paragraph 7.4 requires electricity and gas companies to implement the industry procedures by the end of Q4 2017.

As UR will only make its final decision in summer 2017, the timelines are unachievable if industry is to give UR's decision full and proper consideration; while each DNO and each Gas Supplier will have their own policies and procedures for dealing with energy theft, a common procedure will have to be agreed between the three DNOs and six Gas Suppliers operating in the Northern Ireland natural gas market. This round-table cannot commence until UR issues its final CoP. DNOs and Gas Suppliers must be afforded sufficient time to deliver an effective industry procedure that ensures the safety of all consumers. The three-month timeframe proposed by UR will not allow for this.

Furthermore UR's draft proposal to modify DNO licences to include definition of an "eligible customer" is a parallel workstream and licensees must have full sight of the proposed treatment of reconnections before an effective industry procedure can be put in place.

Proposed Licence Condition - Future Consultations

As energy theft can have serious safety consequences, it is critical that industry is given the opportunity to comment on any future consultation on energy theft, revisions to the CoP or revisions to the licence condition prior to any wider circulation to ensure that none of the contents compromise industry's ability to manage energy theft. Paragraph 1.17 of the CoP should be amended accordingly.

DRAFTING OF THE CODE OF PRACTICE FOR THE THEFT OF GAS

PNGL provides some more specific comments on the CoP and highlights some drafting errors below.

i. Drafting Comments

PNGL agrees that the CoP should be a mandatory licence requirement however we disagree with paragraph 1.2 of the CoP that any failure to establish and implement industry procedures would be considered a breach of the CoP and therefore a breach of licence.

It is wrong to place an obligation on a licensee where compliance is not within its control. Exceptions must be allowed e.g.

- where licensees are working together and cooperating to establish such procedures but agreement cannot be reached in the short timeframe proposed by UR; or
- where licensees have worked together and cooperated to establish such procedures but agreement cannot be reached on all areas and UR has to adjudicate on the matter; or
- where one or more parties refuse to work together to establish such procedures.

Furthermore it cannot be PNGL's responsibility to ensure that industry procedures are compliant with all relevant legislation, only legislation that is relevant to it as a DNO. Paragraph 1.16 must therefore be specific to a licensee and not licensees.

PNGL also has concerns with the definition of "theft of gas" as currently drafted in section 9 of the CoP. The offence of theft is already defined in law as at Section 1 of the Theft Act (Northern Ireland) 1969:

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly"

Each of the provisions "*dishonestly*", "*appropriates*", "*property*", "*belonging to another*", "*with the intention of permanently depriving the other of it*" are further defined in Sections 2 to 6. Gas and all Gas Plant satisfy the definition of property. Electricity is abstracted as opposed to stolen as it is not real or tangible.

Although UR cannot redefine "theft of gas", it may be prudent to define "energy theft".

ii. Drafting Errors

- Review numbering of bullets throughout e.g. the bullets in paragraph 1.1 should be numbered (i) to (iii) and not (iv) to (vi);
- Review numbering of footnotes throughout e.g. the footnote in paragraph 1.1 should be numbered 1 and not 12;

- Footnote 12 in paragraph 1.1 should refer to gas and not electricity;
- The wording in principle 3 (Prevention, Detection and Investigation of Theft of Gas through best practice) of the eight principles underpinning the CoP contained in section 2.1 of the CoP should consistently reference “prevention”, “detection” and “investigation” and not “discourage”, “identify” and “deal with” theft of gas.
- The wording in sections 3.2 and 3.3 of the CoP should consistently reference “prevention” and not “detering and preventing” theft of gas.
- Paragraph 4.6 re. keeping up-to-date with the latest methods for detecting energy theft should also apply to Gas Suppliers;
- Paragraph 5.6 should refer to gas and not electricity;
- Paragraph 5.22 re. keeping up-to-date with the latest methods for investigating energy theft should also apply to Gas Suppliers;
- Paragraph 6.2 should be extended to include “preventing, detecting **or investigating** Theft of Gas”; and
- Paragraph 6.2 should refer to gas and not electrical systems.