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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1099/1/2/08

Victoria House,
Bloomsbury Place,
London WC1A 2EB

21st January 2009

Before:

VIVIEN ROSE
(Chairman)
PROFESSOR PAUL STONEMAN
DAVID SUMMERS

Sitting as a Tribunal in England and Wales

BETWEEN:

NATIONAL GRID PLC

Appellant

- v -

THE GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

supported by

SIEMENS PLC
CAPITAL METERS LIMITED
METER FIT (NORTH WEST) LIMITED
METER FIT (NORTH EAST) LIMITED

Interveners

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HEARING (DAY 5)

APPEARANCES

Mr Jon Turner QC, Mr Josh Holmes, Mr Meredith Pickford and Miss Laura Elizabeth John (instructed by Pinsent Masons LLP) appeared for the Appellant.

Miss Monica Carss-Frisk QC, Mr Brian Kennelly and Mr Tristan Jones (instructed by Ofgem) appeared for the Respondent.

Mr Christopher Vajda QC and Miss Kassie Smith (instructed by Hill Hofstetter LLP) appeared on behalf of Siemens Plc.

Mr Christopher Vajda QC and Mr Ben Rayment (instructed by Slaughter and May) appeared on behalf of Capital Meters Limited.

Mr Fergus Randolph and Ms Sarah Abram (instructed by United Utilities Group plc) appeared on behalf of Meter Fit.

1 THE CHAIRMAN: Yes, Mr. Turner.

2 MR. TURNER: Madam, before our second witness, Mr. Shoemith, takes the stand, may I make
3 one observation, we are concerned about the timetable, and particularly concerned
4 obviously about the impact on ourselves as the Appellant. We have, for our part, exercised
5 considerable restraint in the choice of witnesses to cross-examine and we are concerned that
6 because our cross-examination comes at the end we, the appellant, should be cut back
7 because others overrun their estimate. The estimate was, from my learned friend, was that
8 she thought we would probably get through all of the National Grid witnesses in a day or
9 under. Our first witness obviously took all day.

10 The other point which is relevant to this is that it also involved somewhat lengthy cross-
11 examination on the precise causes of adjustments in the volumes of the two CMOs, and that
12 was a topic, madam chairman, you indicated it was not at least likely to be necessary for the
13 Tribunal to adjudicate on. Given the clarification that I have given on National Grid's
14 position in principle and on those specifics I would suggest there should be no need for
15 lengthy questioning about it going forward, and out of counsel's courtesy I will not of
16 course interrupt anybody's cross-examination, but I would ask my learned friends to bear
17 that in mind.

18 THE CHAIRMAN: Yes, I am also concerned about the timetable. Let us take stock perhaps at
19 the short adjournment and see where we have got to. I did not intervene to hurry things
20 along yesterday because I did not think that was appropriate but counsel should take
21 account of the fact that we have a limited period in which to finish this case and it will be
22 quite difficult to manage the remainder of the case if we do not finish in the time that has
23 currently been allotted to it.

24 MR. TURNER: Madam, with that shall I call our second witness for cross examination.

25 THE CHAIRMAN: Yes, thank you.

26 Mr. COLIN MICHAEL SHOESMITH, Affirmed

27 Examined by Mr. TURNER

28 Q Mr. Shoemith, you have a bundle in front of you marked WS1? Would you turn to p.20 in
29 the bundle numbering. At the foot of that page is that your signature? A. It is.

30 Q I am sorry, my mistake, could you go to p.2 of the bundle and at the foot of that page is that
31 your signature? A. It is.

32 Q Is this your first witness statement in evidence to the Tribunal? A. Yes.

33 Q Would you turn to bundle WS5 and turn in that to tab 18. Within tab 18 could you turn to
34 p.2851? A. Yes.

1 Q Is that your signature? A. It is.

2 Q Is that your second witness statement for these proceedings? A. Yes.

3 Q Mr. Shoesmith, just one or two brief matters. If you would go back to WS1, and look at
4 what you say in para.2 at the top of that page, the paragraph that begins:
5 “In the schedule to this statement I identify and collect together the materials
6 provided to Ofgem in the course of its investigation which can be taken,
7 collectively, to represent my personal evidence on the matters in issue in the
8 appeal.”
9 A. Yes.

10 Q When you say: “The materials provided to Ofgem”, to avoid confusion what parts exactly
11 do you mean here? A. A lot of the material towards the back is a lot of the presentations
12 at the oral representation, so parts of that were my material that I presented and at the front
13 of it are my direct witness statements.

14 Q Could you turn p.7 in that bundle, please? A. Yes.

15 Q On p.7 what is this? A. Page 7 is the first page of my witness statement.

16 PROFESSOR STONEMAN: Could you clarify whether you are talking about external or internal
17 numbering?

18 MR. TURNER: This is the external numbering of the bundle, tab 1, p.7? A. This is the first
19 page of my witness statement one.

20 Q And this was a witness statement produced in what connection? A. In connection with
21 the investigation.

22 Q Could you turn in that tab to p.208? A. Yes.

23 Q This is the transcript of the oral representations meeting with Ofgem in September 2006
24 which you attended and spoke at? A. Yes.

25 Q Is there anything in your evidence as a whole that you would wish to clarify or correct?
26 A. On p.225 beginning on line 4, it says: “On 1st July 2002, in a meeting with British Gas, I
27 was personally in discussion.” So this says that I was at the meeting on 1st July. In my
28 witness statement on p.14 in para.24 it explains there that “I was personally threatened with
29 the five year displacement programme” I refer to on p.325, but I illustrate that with a
30 meeting that took place on 1st July, which is a meeting at which I was not present. The
31 witness statement is actually what happened, that I was personally threatened with a five
32 year replacement programme but I used the 1st July meeting as an illustration where it was
33 documented, where five years was referred to. In the words which are on p.225 those two
34 events have actually become merged, so it was mis-stated.

1 THE CHAIRMAN: So, were you, or were you not, at 1st July? A. I was not at the 1st July
2 meeting as it says in the witness statement.

3 MR. TURNER: Mr. Shoemith, if you wait there other counsel will have questions for you.

4 Cross-examined by Miss CARRS-FRISK

5 Q Mr. Shoemith, keeping that statement open in front of you that you just referred to - your
6 statement in the administrative procedure, para. 24, you refer there to British Gas' very
7 simple commercial view of the world - a position that it maintained throughout negotiation
8 that they would simply rip out all of your installed meters as quickly as it could, and replace
9 them with cheaper ones. Then you refer to that threat of a five year replacement
10 programme. Yes? A. Yes.

11 Q It is right to say, is it not, that you did not actually believe that threat of a five year
12 replacement programme. A. We considered that there was a range of possibilities.

13 THE CHAIRMAN: Do not answer 'We considered' ---- A. I considered.

14 Q You have to give evidence as to what you understood at the time. A. Yes. I believed
15 there was a range of scenarios against which British Gas could remove the meters. Five
16 years was one of them, but I didn't think that that was very probable. I thought that a more
17 realistic range of how quickly British Gas could remove the meters was in the range of
18 seven to nine years.

19 MISS CARSS-FRISK: As you indeed say in para. 29 of your statement - that same statement:

20 "I personally believed British Gas could have removed our installed meters in a very
21 short period, say seven to nine years".

22 So, roughly reflecting what British Gas had estimated as the fastest possible programme of
23 eight years. That is right, is it not? A. I didn't know what British Gas actually believed
24 that they could do at the time. I've seen in subsequent papers that they believed that the
25 fastest -- that their central estimate of what they could do was about eight years.

26 Q You took the view, as you said, of say seven to nine years - not five years. So, you were
27 really aware in your mind that what British Gas was putting forward was a negotiating
28 tactic - a bit of bluffing on their part. A. I believed at the time that five years was
29 possible, but not likely. So, my expectation was that they would promote the idea of what
30 they thought was at the extreme of what they could do, and they were saying five years. So,
31 that was against my expectation of the sort of thing that they would do.

32 Q You say that, but you have just accepted a moment ago that what you believed was that they
33 could have removed your installed meters in a very short period - say, seven to nine years,
34 as you say in para. 29. So, seven to nine years was your estimate. Are you now trying to go

1 back on that and say, “No, actually I believed it was five”. A. No. I believe that there
2 was a range of periods over which they could do it. Some were more likely than others.
3 Five was possible, but I did not think it was the most likely. I thought that the most likely
4 central estimates were in the region of seven to nine. In fact, as it turned out, in Italy NL
5 removed all of the electric meters between 2000 and 2005. They actually did a five year
6 replacement programme. So, it can be done.

7 Q Leaving electric meters to one side, Mr. Shoesmith, you are now rather trying to shift your
8 evidence, are you not, from the way it was put in your statement. You are now saying five
9 was possible, but seven to nine most likely. Now, I would ask you then: Why is it that in
10 para. 29 of your statement you do not say, “Five was possible, but seven to nine most
11 likely”. What you say is, “I personally believed British Gas could have removed our meters
12 in a very short period, say, seven to nine years”, indicating that that is the shortest period
13 that you believed possible. A. That was not what I meant in this statement. The analysis
14 that we did at the time ranged typically from five to thirteen years. So, a lot of the analysis
15 we had was saying, “If they removed meters in five years -- seven years -- nine years --
16 thirteen years --“ We didn’t know how quickly British Gas were going to do this. We
17 produced a range of estimates. Some of those estimates we believed were more likely than
18 others. The ones that I believe were more likely then, and would still say now, was seven to
19 nine. That didn’t mean that they couldn’t do it in five.

20 Q Let us have a look at this meeting on 1st July, 2002 that you referred to, that you were not
21 present at, but you mention in para. 24 of your statement. Could you go, please, to p.123 of
22 the bundle in front of you? That is a note of that meeting, is it not, at p.123? It is National
23 Grid’s note of the meeting, is it not? A. It appears to be, yes.

24 Q In para. 1, one sees the reference to British Gas’ position at the meeting:

25 “BGT explained the basis of how they assess the value of Transco’s proposal.
26 They expect to be able to replace all meters in five years using MOs”.

27 Then there is a reference to a price reduction they expected. Below the bullet points,

28 “We [i.e. National Grid] explained that we try to match our estimate of their
29 metering costs based on our view of how fast meters could be replaced and our
30 estimate of the competitive price of meters. On this basis we judged that our
31 prices should be attractive. We confirmed that we would take the risk that they
32 could not replace meters as fast as they say”.

1 So, Grid's position at that meeting was certainly that you would take the risk that they could
2 not actually replace in the five years that they had threatened. A. That is what they
3 appear to have said, yes.

4 Q You were prepared to call their bluff. A. That's what this says.

5 Q On the basis that they could have done this - take eight years - it is fairly obvious, is it not,
6 that they would have had to rent a very large proportion of their meters from National Grid
7 for a number of years. I think that follows. A. Well, they would be renting meters on a
8 declining basis over eight years.

9 Q Yes. You sat there with 97 percent of all the installed meters at that time, did you not - just
10 before the MSAs were entered into? A. I don't know. It was a large percentage. I don't
11 know what the percentage was.

12 Q Would you accept from me that 97 percent may be about right? A. It was a very large
13 percentage. I don't know what the percentage was. It could've been 97 percent.

14 Q Now, you were able to use the fact that you had, and were at that time renting out, all those
15 meters. You were able to use that, were you not, to strike your MSA deal with British Gas
16 on the basis that they would get an across-the-board reduction in rental compared to the
17 P&M, but nevertheless, the price was above that of the CMOs. A. Sorry. Could you
18 repeat the question?

19 Q Yes. I will put it in several parts. When you agreed the MSAs with British Gas you reduced
20 the price compared to the P&M terms, but the price was still above the price that was being
21 offered by the commercial meter operators. A. We didn't know what the prices were,
22 although we produced our own estimates of what we thought that they could be. We
23 offered British Gas basically a choice of the P&M -- continue to stay on a P&M contract or
24 take an alternative contract where we thought - we hadn't agreed what the price would be
25 with them at that point - we would be offering them an up-front reduction of our prices. But,
26 we didn't know where the cross-over point would be against their commercial meter ...

27 Q You had a pretty good idea, did you not, that the price that you were offering as part of the
28 MSA deal was above the price that was being offered by the CMOs? A. That was our
29 expectation.

30 Q You know now that that, in fact, was the case? A. I've seen documents here where there
31 are some numbers on.

32 Q What I am suggesting to you is that you were able to achieve that deal with British Gas at a
33 price level above the level offered by the CMOs because you were able to use your huge
34 base of installed meters to offer them an across the board deal? A. I don't understand

1 necessarily the link. The deal we did offer was, yes, to reduce the price of all of the meters
2 that we rented to them at that point in time.

3 Q Bearing in mind the logistics that they were not going to be able to replace the meters faster
4 than, let us assume now, eight years, that struck them, on that basis, as a good deal for
5 them? A. We believed that we were offering them – we were saying that we can offer
6 you an equivalent value to that present value of the whole life of these contracts, which will
7 be equivalent to the alternative of removing the meters as fast as you can in taking a CMO
8 price.

9 Q You were able to do that because you had all those meters at the time? A. The deal
10 wasn't dependent upon having 5 per cent, 50 per cent, 97 per cent. That basic economic
11 trade-off works at any percentage, whether you have got 5 per cent, 50 per cent or anything
12 else. I don't think the fact that we had 97 per cent in the illustration altered the fact that that
13 deal still works. That deal would work with one meter – probably not one meter, but it
14 would work with a small population of meters as well as ----

15 Q It was the across the board reduction that made it attractive to British Gas, was it not?
16 A. They did their own evaluation of what attractive. We were offering it with all our
17 meters, and they were a large percentage of the meters in the market, whatever that
18 percentage was.

19 Q They were a large percentage, and in fact at the time of negotiating the MSAs, you believed,
20 did you not, that Grid was dominant in this market? A. At a personal level I don't think I
21 really understood what dominant was in the context that you're talking about. As far as I'm
22 aware, National Grid hadn't ever evaluated whether it was dominant or not. We recognised
23 that there was a risk, certainly, that we were dominant, and we chose to act in a way that
24 was consistent with being dominant, if indeed it proved that we were.

25 Q I appreciate that is what you say in para.39 of your statement, the one we were just looking
26 at, but I wonder whether you did not, in your position, form a view – I would suggest that
27 you surely must have formed your own view – as to whether you were, in fact, dominant?
28 A. Sorry, your question was whether I did. I didn't need to. We were offering a
29 commercial deal in response to the stranding risk that we faced. What I was looking at was
30 what was the best way of protecting the stranding risk that National Grid had at the time.
31 That was something that I was comfortable with. We pulled together a team to advise on
32 the risks that we had to manage associated with that commercial offering, which included a
33 legal and regulatory team. So they managed that part of the process. I did not personally
34 evaluate whether we were dominant, or anything else.

1 Q Are you really saying that if someone had asked you at the time, “What is your view, do
2 you believe that Grid is dominant here on balance?” you would have said, “I just do not
3 have a view”?

4 MR. TURNER: Madam, I do not like interrupting at all. If a legal question is put to a witness it
5 does seem rather odd.

6 THE CHAIRMAN: I think that the point in dominance is a matter for submission. I think this
7 witness has answered what he understood at the time. I am not sure it is worth pursuing this
8 with him at the moment.

9 MISS CARSS-FRISK: Madam, so be it. If I may, I will just ask one more question. (To the
10 witness) I am not asking to disclose anything about it, but did you take advice specifically
11 on that point? I am not asking you to tell me what the advice was. A. All the questions
12 of Competition Act issues and dominance, and whatever was associated with the
13 Competition Act, we took advice from our lawyers, so these would be internalised within
14 National Grid.

15 Q Looking then at paras.40 to 43 of your statement, you deal there with a document that one
16 sees at p.140 of the bundle. Have you got that, headed “Project JAM way forward”?

17 A. Yes.

18 Q It says on p.140 that it is dated 7th October 2002. Should that in fact be 2003? A. It looks
19 like it, yes.

20 Q Can you help us as to who actually prepared that document? A. The previous page says it
21 was sent by Martin Cook.

22 Q Does that mean that he prepared it? A. If he was the – I can’t remember his title, project
23 director, project manager, responsible for the project. There was a large team on this
24 project. Whether Martin did it himself, it’s more likely that the team produced the note.

25 Q You received it at any rate at the time? A. Yes, it was sent to me.

26 Q You are content, as I read your statement, that that note represented Grid’s or senior
27 management’s position at the time? A. This was an illustration of, it looks like a
28 background note for negotiating tactics. Whether actually it necessarily represents the
29 position, certainly elements of our position would have been built in to there. It would have
30 been drafted for a specific purpose.

31 Q You are not suggesting in your statement that you disagree with anything that is being put in
32 that document? A. In my statement?

33 Q Yes. A. I would be referring to a particular element of it.

1 Q Yes, but in answer to my question, it is right, is it not, that in your statement you are not
2 suggesting that you disagree with any aspect of what is being said in that document?

3 A. I've not gone through and compared my statement with what it says in this negotiating
4 note, or this negotiating brief. This was used as an illustration of a particular point.

5 Q If we look at the particular aspects of the document that you refer to in your statement,
6 paras.40 to 43, you are seeking to explain what is being said in the document, but I do not
7 understand you to be disagreeing with what is being said there. Is that right? A. Let me
8 just remind myself of it, 40 to 43. (After a pause) Okay. In paras.40 to 43 I was
9 responding to the statement which Ofgem was referring to, which is, "We still want to do a
10 deal now because we're in a strong negotiating position now, which may weaken as the
11 market develops". That is an extract from the document at p.141, I believe.

12 Q The first bullet point on p.142. A. It's about half way down the page on p.142. That
13 document is simply cross-referring the references in paras.40 to 42.

14 Q If we look at the document, the first bullet point on p.142:

15 "Current climate is very different to 12 months ago, we still want to do a deal but
16 risk balance has changed in our favour.

17 We accepted an LOI from BGT 10 months ago which doesn't reflect the change in
18 risk balance – we need to get passed this

19 Context

20 Climate for effective competition not moved on at the pace originally envisaged
21 and stranding threat is therefore [materially] weaker than 12 months ago."

22 If you move down to the heading: "What we now want":

23 "We still want to do a deal now because:

24 we are in a strong negotiating position now which may weaken as market
25 develops.

26 Now, just homing in on the bullet point: "We are in a strong negotiating position now which
27 may weaken as market develops", That reflected your position at the time, did it not, you
28 were in a strong negotiating position at that point? A. No, it doesn't. The context here
29 was that British Gas – I mean as was referred earlier on – could remove our meters in a
30 period which my central estimate was seven to nine years, potentially as little as five. The
31 negotiating position that we had was against the context of what their alternative was to the
32 deal that we were offering. The consequence of removing the meters in seven years, eight
33 years or nine years, was a huge number, I cannot remember exactly what the numbers were
34 – roughly seven years cost us £500 million, nine years cost us £400 million, eight years

1 presumably somewhere in between. So the fact that, as this refers to here, if they had been
2 originally kicking off and looking to remove them in eight as a result of the fact that some
3 of their teething problems had turned eight into eight and a half did not materially change
4 the fact that we were going to lose somewhere between £400 and £500 million from the
5 premature replacement, as we saw it, of our meters. So our negotiating position remained
6 here as it was whenever we spoke to British Gas against whatever their alternative was.
7 That was how we saw our negotiating position, or our position generally from the first day
8 really in this job.

9 Q Mr. Shoesmith, it is probably a really simple point, but if you say here “We are in a strong
10 negotiating position now, one might expect that to represent the position, we are in a strong
11 negotiating position now. You are trying to suggest that you were not, but the fact is that
12 what Mr. Cook has recorded in this document, and I would suggest represented the true
13 position at the time? A. This was a document which was a briefing note for a particular
14 event, so it was “How do we continue the discussion on business rates?” It is not a
15 document which is addressing whether we believed our position vis-à-vis the whole deal
16 was good, bad or indifferent.

17 Q If it does not purport to do that, why does it say: “We are in a strong negotiating position
18 now”, focusing specifically on the proposed deal? A. This was a period after which
19 there had been a falling out with British Gas over the understanding of the Letter of Intent
20 with respect to business rates. Now, we had believed, when we pulled together the Letter of
21 Intent that Ofgem would remove business rates before 2005, I cannot remember exactly
22 when we thought it would happen, and the removal of all those business rates would accrue
23 to us, to National Grid. Competitive meter operators did not pay business rates, so National
24 Grid was the only business that paid business rates, and there was, as I recall, consensus in
25 the industry and pretty much everywhere that National Grid would not pay business rates on
26 meters on an ongoing basis, because that was not the basis on which they were calculated.
27 So everybody had the expectation that they would be removed. Our expectation would be
28 that they would be removed, I think, in 2003.

29 Q And it was a realisation that it might not happen that triggered the potential to renegotiate
30 the Letter of Intent? A. What happened was, I am not sure whether it was a consultation
31 but I think Ofgem went out to consultation on business rates and whilst initially they were
32 indicating to us that they would be removed early following the consultation they said that
33 they would not and they would be removed later on, 2005. So we saw that as a major loss,
34 that was worth about £33 million to us. We thought that that was a change in the deal that

1 we had struck; British Gas did not agree with that. As a result we kind of lost again. I mean
2 the reference to us being in a strong bargaining position, we never felt that we were in a
3 strong bargaining position and this was another illustration of the way that we felt we had
4 lost this, and therefore we paused and reconsidered whether we did want to continue with
5 the deal as it had been struck.

6 Q If one looks right below the heading “Context” you are, of course, specifically referring to
7 how you perceived, or Grid perceived – certainly Mr. Cook perceived – the stranding effect
8 being materially weaker than 12 months ago. So all I am really asking you to accept is that
9 as this document records that point, the way you evaluated things, certainly at that time, you
10 thought you were in a pretty strong position? A. The word “materially” is in square
11 brackets, and the convention, certainly where I have been involved, means that that is not an
12 agreed term, it was just put in as a word, it was never finalised. The position had improved
13 because at that time there had been teething problems in mobilising. I think I illustrated
14 before the difference between seven years and nine years is 500 to 400 million, these are
15 all ----

16 THE CHAIRMAN: The Letter of Intent, were the amounts in that based on the seven year net
17 present value of the seven year replacement? A. The use of five years, seven years, or
18 any other years would be effectively to establish what British Gas’s alternative was. That
19 would then cause a financial consequence to National Grid. The size of that consequence
20 would then determine how much we would offer in return. You can not draw a straight line
21 between it being seven years and £ [Confidential], it doesn’t quite work that way. What the
22 seven years said was that there will be a cost to us which will be – I will make a number up
23 - £500 million, so we could offer a number in terms of price reduction all the way down to
24 effectively a cost of £500 million and we would be better off. What £ [Confidential]
25 translated into I do not know, we never actually agreed and we did not need to agree
26 whether the number was seven years, six years or anything else.

27 Q Is not the point of this note that now you realise that because of the teething problems
28 actually you may have been a little over cautious in your assessment of how quickly they
29 would swap out these meters and so given that it appears if these teething problems are right
30 that you cannot actually have an accelerated programme which you feared at the time that
31 the letter of intent was agreed, that you might be able to push the price up a little because it
32 is going to take them longer than they thought? A. Where we were was that we believed
33 that they could still do a huge amount of damage to us but the period over which they could
34 do it had slipped slightly, but the choice that we had was: “Do we want this deal?” and we

1 did want the deal because the alternative would have cost us £400 or £500 million, so we
2 still wanted the deal; the threat against us still existed, if they had moved to accelerated
3 replacement. We felt as though we had no choice but to take the deal because if we had not
4 taken this deal British Gas would have had to have gone for the price they saw available to
5 them. The only way we saw them getting the price at the time was to remove the meters
6 quickly, at which point we would have incurred the pain. So we still had to do the deal.
7 We felt that we were in a slightly better position then than we had been six months ago, but
8 we still had to do the deal, and that was the choice that we made. We made that choice even
9 though we had lost the further £33 million against what our original expectation was.

10 Q You say you felt you had no choice, if you look at para. 46 of your statement, you sum up
11 your position there, and you say in the middle of that paragraph:

12 “This position has not changed: It is my belief that if the legitimate protection
13 provided by the premature replacement charges is removed, National Grid will be
14 forced to accept a greatly accelerated loss of working assets or to cut its charges for
15 credit meters”.

16 Now, you did have the choice, did you not, of seeking to compete with the CMOs in terms
17 of prices -- rentals? A. We never actually sort of worked this all the way through. In
18 order to have made reducing charges effective you would've had to reduce them to a point
19 at which effectively is probably below the CMOs' prices. What we never evaluated was
20 whether we were allowed to do that -- whether that would've actually given rise to
21 Competition Act issues if we'd reduced our prices that far. In any event, we did believe that
22 reducing prices without seeking an exchange of payment completion charges was a less
23 valuable option than the one that we chose.

24 Q It is a less valuable option and you took the view, as I understand your evidence, that you
25 were effectively entitled to protection for what you saw as your sunk costs. A. We
26 certainly didn't believe we were entitled. At the time that I joined Metering this market had
27 already become -- the decision that this market was competitive had already been taken, and
28 taken for some time. I don't know whether entitlement is actually a word which actually
29 would work in a regulated environment, but it certainly doesn't work in a competitive
30 environment. So, we knew that this was a competitive environment, and in a competitive
31 environment I don't think you're actually entitled to anything.

32 Q Well, I used the word 'entitlement' homing in particularly on your reference to legitimate
33 protection provided by the premature replacement charges, because you seem to be
34 suggesting in that sentence 'legitimate for us to have that protection and we were not going

1 to seek to compete on price'. A. Well, we'd lowered our prices. If I could separate that
2 into two points -- What would we mean by 'legitimate protection' and the point that we
3 didn't reduce our prices. We reduced our prices massively. I mean, this contract - I believe
4 we estimated - cost us about £400 million and that £400 million was primarily as a result of
5 reducing our prices. We reduced our prices in a fashion - I think I heard Neil say yesterday
6 - that British Gas believed was at a level where it got an overall better value than its
7 alternative was. So, we did reduce our prices. All those price reductions went presumably
8 straight through to the end consumer. So, we did do that. Therefore I guess we were at a
9 level competing with a price reduction.

10 Q You did do that, but still not to the level, or below, of those being offered by the CMOs, as
11 you have accepted. A. If I could just answer the second part of the previous question, and
12 I will come back to that one -- The legitimate protection -- We believe that we were allowed
13 to effectively ask for payment completion and that that was actually something that was
14 allowed. When we started talking about the deal, we'd talk about it as a term deal. We
15 never really described what 'term' was or how it would actually be embodied in the
16 contract. It was embodied in the contract as payment completion terms. So, premature
17 replacement charges. We believed that we were allowed to do that. That was the legitimate
18 protection provided by the premature replacement charges. So, that is what the 'legitimate'
19 bit meant. We had reduced our prices. I think as I answered earlier on, we didn't think we
20 were reducing our prices all the way down to what the CMOs were offering. Separately,
21 although we never explored it, we believed there was potentially risk in doing that because
22 if our prices -- if we were a dominant company and our prices were lower than the
23 competition, there were potentially issues with that as well, although that was never
24 something which was ----

25 Q As you say, that was never explored. No. Thank you, Mr. Shoemith.

26 MR. VAJDA: I have no questions.

27 Cross-examined by Mr. RANDOLPH

28 Q Just one question: National Grid has a subsidiary called UMS which is a CMO. A. Yes.

29 Q How much did you know about the tenders that UMS was putting in for CMO business
30 when you were creating the MSA terms? A. I was the managing director of both
31 businesses. I knew what both businesses were doing. For the most part I was not involved
32 in the detailed negotiation of either of the deals. For the UMS deal, as sales and marketing
33 director there was a man called Graham Smith who led those negotiations. For the MSA
34 deal the people primarily involved in that were Martin Cook and Malcolm Wesley. So, I

1 was aware of both. I had a level of understanding of both. All of the detail negotiations
2 were carried out by individual teams.

3 Q I thought you said a little while ago that you personally did not know the terms that the
4 CMOs were offering when you were constructing the MSAs and therefore you did not
5 really quite know whether you were undercutting the CMOs, or not. Now, I don't know if
6 you have a way of separating the two parts in your mind with a sort of Chinese wall down
7 the middle. However, that is very difficult to believe if you are managing director of both
8 businesses. A. Within National Grid was National Grid Metering (or whatever it was
9 called back then). That team actually did their own bottom-up estimates of what they
10 thought that the costs would be. Those were the costs -- or, the alternative costs that were
11 used. Very early on in the UMS negotiations I was aware of the prices. There is a headline
12 price, but I didn't know what the details were because there were multiple products and
13 multiple geographic regions. There were four regions. Some regions that were bid for all
14 had different prices. So, I did know what the headline was. The price that was used within
15 National Grid metering, and against which all this was evaluated was effectively the bottom
16 up exercises that they had done. I can't remember which one was higher.

17 Q Thank you.

18 THE CHAIRMAN: Still on the tender and what you knew about it, did you ever see the tender
19 that had been put out by British Gas for this work at the end of 2001? A. I don't recall
20 ever looking at the tender document. I'm pretty certain I didn't.

21 Q Did you have any idea of the volumes of replacement that they were asking companies to
22 bid for? A. My understanding -- Sorry. I didn't look at them. My understanding was
23 that the tender documents were slightly less than the historic replacement levels.

24 Q So, the historic replacement levels were, I think, about 627,000 meters. That is what
25 National Grid replaced generally. A. I wouldn't have thought about it probably in terms
26 of number of meters. I think yesterday I heard Neil say that the tender was based on about
27 fourteen years replacement. So, I would've thought of it in terms of the historic replacement
28 level as about twenty years and it was slightly less than that. I didn't know it was fourteen
29 years. If you'd asked me, I wouldn't have said that.

30 Q I am just trying to understand what you knew at the time you were going into these MSA
31 negotiations with British Gas what you knew about what they had asked the CMOs to do in
32 their tender in terms of the rate of replacement or the volume of meters, however you like to
33 think about it. A. We considered that the contracts that British Gas had entered into were
34 an entry into the market to establish themselves with the meter operators. Having

1 established themselves with meter operators, I believe they could then choose the volume of
2 work that they put to the meter operators as they chose. So when we were looking at the
3 threat within National Grid Metering, we were basically listening to what British Gas said
4 that they would do, and they were saying five years, and our own evaluation of what we
5 thought that they could do, and we believed that they would be able to ramp up and change
6 the terms of the contract that they had with the commercial meter operators as they needed
7 to once they had established the meter operators in the market.

8 Q If one was moving from a tender which was based on a 13 to 14 year replacement to one
9 based on a seven year replacement, that would be a very substantial ramping up of the
10 number of meters that they would have to replace? A. The principle elements of the
11 ramping up were what the manufacturing capacity would be to produce meters, and how
12 quickly you could train meter operators. Fitting a meter is actually quite a simple process, it
13 doesn't take you very long to train a meter operator. If it took you three months or six
14 months in terms of changing 14 years to seven years, six months, even a year, would not
15 stop you from doing that. In terms of the manufacturing capacity, we didn't look at that
16 very often. I think virtually the very first paper that we produced, we used 15 per cent. We
17 were talking about it in terms of years. We used a 15 per cent replacement rate, which is
18 the equivalent of about seven years, and we did that based upon what we thought the
19 manufacturing capacity potentially was at the time. We thought that the manufacturing
20 capacity was probably already at a level which was consistent with seven years. To actually
21 train meter operators to give yourself enough meter operators to go from 20 to 14 to seven,
22 probably even to five, was a matter of months, it wasn't a matter of years.

23 Q When OnStream performs its contract with British Gas, does it have its own workforce
24 separate from the workforce that is used by National Grid for the new and replacement
25 meter activity or do they use the same engineers – do you know? A. There were two
26 elements of how the work was done. There were the work management systems, and then
27 who, as a contractor, was on the end of the work management systems. National Grid
28 Metering doesn't have its own work management systems, and what National Grid
29 Metering is, effectively, it takes a request for a job, passes that request for a job over to
30 National Grid Gas. National Grid Gas then manage how the work is going to be done. It
31 manages the work that is going to be done against either its own workforce or its own sub-
32 contractors, and that is the way that work has been done in National Grid Metering
33 throughout the period. Within OnStream, OnStream established its own work management
34 systems, which effectively said it would manage which job was done on a particular day. It

1 effectively created a schedule of work which would then go out to whoever its contractor
2 was. For a short period of time from the start of the contracts through to, I think, about
3 2004/2005, OnStream was using the National Grid Gas workforce. OnStream would
4 schedule the work, say, "This is what needs to be done, you, contractor, effectively National
5 Grid Gas, go and do the job". It then moved over to a complete sub-contractor, third party
6 workforce.

7 Q So when OnStream puts in its tender for British Gas work, is the expectation then that the
8 work that it carries out would be undertaken by the existing National Grid workforce?

9 A. That wasn't how the tender was put together. The very first response to the tender,
10 which was before – actually, both these responses are before I arrived – the very first
11 response had been in the expectation of using the National Grid Gas workforce. The
12 response to that was that that wasn't a very good tender. The team went back and re-did it.
13 They re-did it basically on an expectation of using a fully third party sub-contracted
14 workforce. That was the way the tender went through. That was the basis upon which the
15 award was made. OnStream went out to tender to get sub-contractors to do that work. Prior
16 to the final award of the work in 2003, the decision went back to the original decision and
17 the decision was to use the National Grid Gas workforce effectively as a sub-contractor. So
18 the tender itself was on a third party workforce. All the systems were designed based upon
19 that. When it actually came to using a workforce, the workforce that was actually used was
20 the National Grid Gas workforce for about 18 months, I think, and then it went back again
21 to the third party workforce.

22 Q Just to be clear that I understand what goes on in the British Gas region when OnStream
23 won the business, that area will be covered by the Legacy MSA so far as the installed
24 meters are concerned. That is an agreement with National Grid rather than OnStream – is
25 that right? A. The Legacy MSA is with National Grid. The Legacy MSA covers the
26 whole of the country with whoever has signed up.

27 Q There will also be a new and replacement MSA, in effect, in relation to that region. Is that
28 also with National Grid? A. Yes, National Grid Gas.

29 Q Then there is, in addition, the contract with OnStream? A. Yes.

30 Q What determines whether the visit to the customer's premises is carried out under the
31 OnStream contract or under one of the National Grid contracts? A. If the supplier hasn't
32 chosen a CMO then the only contract that they have will be with National Grid Gas, so in
33 that event that work will be carried out by National Grid Gas, National Grid Metering,
34 unless there has been a change of supplier event. I will come back to the change of supplier

1 event. If the supplier has chosen to go out to a CMO, which for the vast majority of the
2 time has only been British Gas, although there are a couple of others that have done it
3 recently, then the supplier will choose who does the work for them. Work is largely either
4 policy work or reactive work, so the policy work is where OnStream, the commercial meter
5 operator, is removing and changing over the pool of meters that British Gas has provided it.
6 Reactive work is usually from a customer, so an end consumer. The end consumer in most
7 instances will contact their energy supplier, and the energy supplier will then give the work
8 to whomever they choose. There are some events in a case of emergency where end
9 consumers will come through different routes, and there are multiple routes that they can
10 come through.

11 Q Generally in the area where there is both an OnStream contract and a National Grid
12 contract, are you saying that it is the gas supplier who decides generally who goes out to
13 them? A. Virtually all the works can be decided by the energy supplier.

14 (The Tribunal confer)

15 MR. SUMMERS: You were managing director of two companies, and you say in your statement
16 that in fact your role was more akin to that of being a chairman, so you were responsible for
17 strategy and assessing performance. I take it in that connection you would regard yourself
18 as an executive chairman? A. I am not sure I truly know the difference, but I think so,
19 yes.

20 Q That is to say that you were a full-time employee of National Grid with executive powers to
21 direct those companies? A. I was a full-time employee with executive powers.

22 Q Yes, and so did each of those two companies have internal Boards? A. We called them
23 "Management Committees" yes.

24 Q Was there cross-representation on those Committees? A. The shared activities of
25 strategy, myself and IS, were then each one had their own business operations director and
26 an Operating Committee, so there is an Operating Committee chaired by the Business
27 Operations director, where operations, finance and commercial issues were dealt with,
28 things which actually needed to be approved above the Operating Committee up to the
29 Management Committee where there was myself, the strategy manager, and the IS manager.

30 Q Yes, if you are starting companies in this situation and you have them running side by side
31 it is not unusual in business for representatives from one Board or one Committee to come
32 and sit in on the affairs of the other Committee or to receive minutes from the other
33 Committee. Was that the case here? A. For HR, IS, change management, HSE - those

1 were actually strategy, those were shared resources, so those resources were actually
2 common to both businesses.

3 Q But for instance were the budget details shared between the two companies? A. Not
4 between the two companies, no.

5 Q Although they had common resources which were presumably common overheads and
6 would have appeared in each budget and therefore been the subject of discussion between
7 them? A. The Management Committee had the budgets for both businesses so if you
8 were on the Management Committee of both businesses you would have had the budgets for
9 both businesses. The budgets that came up to the Management Committee would not have
10 the level of detail as to what the individual costs in each individual department would be,
11 they would be far more summarised than that.

12 Q Were the companies in the same building? A. They were in three buildings and they
13 were on three sites; on two sites they were in the same building; on one site they were in
14 separate buildings.

15 Q Right, and those who were directing the sharp end of the business, that is to say the business
16 operations' directors, were they in the same building, or separate buildings? A. The
17 operations, commercial and finance people were completely separate so unique to the
18 individual business. The business operations directors were also unique to each business.
19 Both of those moved between each of the locations, their principal desk was in the same
20 building in Homer Road.

21 Q Right, so there was every likelihood of fairly regular contact between them? A. You
22 could not move between, whilst in Homer Road it was the same building, you could not
23 actually move between the areas. Each part of the building had an electronic pass. If you
24 were the business operations director for OnStream your pass would not get you into the
25 part of the building which is occupied by NGM, so they could not physically ----

26 Q Yes, and finally, just to confirm that as "Chairman" you were responsible for directing the
27 strategies of each of those companies, and for ensuring that they were compatible with each
28 other, that is to say that they did not overlap and they were not pointing in conflicting
29 directions? A. I was responsible for setting the strategy and the strategy that was set for
30 the businesses was that OnStream was the commercial part of the business which would
31 respond to tenders, and that National Grid metering would basically manage down its
32 legacy stock of assets and do its best to stop taking on regulatory obligations. So we
33 pointed them in different directions in the strategy ----

1 Q And so therefore although you did not know, as you say, the detail of the negotiations that
2 were taking place you nevertheless accepted responsibility for the overall strategy being
3 pursued in those negotiations and the directions in which those negotiations headed?

4 A. If we took a view that they would come together in National Grid somewhere and the
5 view was that that would come together at my level, but yes in terms of the strategy, the
6 direction, somebody was going to do that and that was going to be me.

7 MR. SUMMERS: Thank you very much.

8 THE CHAIRMAN: Any re-examination, Mr. Turner?

9 Re-examined by Mr. TURNER

10 Q Mr. Shoemith, you were questioned about your awareness of the relationship between the
11 individual prices for National Grid's meters under the Legacy MSAs, and the prevailing
12 CMO prices. Can I ask you to pick up a bundle labelled M1 and turn in it to tab 27. On
13 p.159 is an email addressed to you, among others, from a Mr. Edward Astle of 6th August
14 2003. If you turn to the second page, p.160, look half way down that page we are in the
15 middle of a draft letter to Ofgem. Look please, at the third indented bullet point from the
16 bottom up, beginning: "The prices currently on offer ..." and read that to yourself?

17 A. Right. (After a pause) Yes.

18 Q Are you able to comment any further on your awareness at any time of the relationship
19 between National Grid's prices for meters under the legacy deal and the CMO prices
20 prevailing at that time, for either PPMs, or DCMs? A. The numbers that have always
21 been in my mind for the National Grid metering prices are £13 and £29, despite the fact that
22 that covers a period of seven years and those are not the prices. They will have been the
23 prices at some point in time, so if you ask me what the prices were for the P&M contract I
24 will tell you £29 and £13, and they will be wrong but those are the benchmarks that I have.
25 The benchmark that I know for the MSA deal was £ [Confidential], and I can remember £
26 [Confidential], any other number it would be not a surprise to me but I will look at it and I
27 won't recognise it. So those are points in time.

28 In terms of the reference to the commercial meter operator prices, I was there on day one, or
29 January 2002, and at that point there were very few people working on that particular
30 contract. I think there were two or three full-time staff. Everybody else was shared.

31 Therefore I saw the numbers which were -- I want to say £9. But, if you ask me whether it
32 was £9.03 or £9.52 or £8.75, I couldn't tell you. So, at a headline, those were the kind of
33 things that I knew, and, frankly, my memory hasn't really changed since then, and those
34 numbers tend to stick with me. If I look at this , with a 20 percent reduction I'd be

1 measuring it against £13 and £29. That would probably be about as far as I'd ever get in
2 terms of prices.

3 THE CHAIRMAN: Just to be clear, when you were answering Miss Carss-Frisk's questions,
4 what you had in mind was the difference between £ [Confidential] and £9. Is that fair?

5 A. What I remember of it at the time was that the team were saying that they thought that
6 the price could go as low as £9.50. So, I didn't ever measure ----

7 Q What do you mean, 'the price could go as low ----'? Your price or that is what the market
8 price might end up at? A. I think in the early documents there was an assumption that the
9 market price was, like, £8.50. I think that that was what National Grid Metering used as its
10 -- I'd have to check that, but -- That's what I thought National Grid Metering was
11 measuring against. So, when it was doing the calculations -- If you see, this is the diagram.
12 You have to put a price into there to get this as a diagram and ...

13 MR. TURNER: For the Tribunal's reference, when Mr. Shoemith refers to the 'scissor
14 diagrams' - and he will confirm - he is referring to a slide presentation within his evidence
15 beginning at p.61 in the tab at WS1, which contains the internal presentation in order to
16 determine their strategy. I am not going to ask anything further about that. Mr. Shoemith,
17 if you put that away and go to Bundle WS1, and go back to p.141 in Tab 1, this is the
18 briefing note by Mr. Martin Cook of October 2003 on which you were questioned. Please
19 turn to p.142 of the external numbering on the left-hand bottom of the page. You will see
20 there the statement,

21 "We want to renegotiate the deal but retain most of the structural elements of the
22 LOI" and then "a new deal should --"

23 -- and several bullets follow. Read those. What in fact happened after this by way of a
24 change from the LOI? A. In terms of the LOI the - the £ [Confidential] number was
25 shaped so that for a period - and I don't know what the period was - the £ [Confidential]
26 was slightly higher, and then after that period it then came down lower. That shape was
27 structured on the basis that it would've been net present value neutral to the deal. So, in
28 terms of improving the deal, it didn't improve the deal. It left it the same, but re-shaped the
29 prices for two years roughly such that the income to National Grid was slightly higher in the
30 earlier years than it had been anticipated if it is £ [Confidential]. So, in terms of the first
31 point -- the first three points we didn't improve the NPV. We didn't improve the deal, but
32 we did shape the earnings so that our earnings were slightly better earlier on. But, we did
33 not manage to claw back all of the earnings. I believe that the deal that was struck was

1 effectively 50:50 as in we would get about half of the earnings impact of the loss of
2 business rates.

3 THE CHAIRMAN: That is the business rate zone. A. Yes. So, those were the first three
4 points. (After a pause): I believe on the fourth bullet point -- I believe that the MSAs -- I
5 think the cash benefit did get paid when the industry cut-over happened, although I'm not
6 entirely -- I'm not 100 percent certain of that. (After a pause): I don't think we got
7 tangible commitments from the shippers to support industry cut-over.

8 Q What does 'industry cut-over' refer to? A. Legacy metering -- or, regulated metering was
9 carried out through, as it was, Transco's distribution contract at the time. The idea was to
10 separate out the metering element of that from distribution. That was called RGMA. It was
11 also called 'industry cut-over'. That happened in, I think, July 2004. Effectively, that was
12 the point at which the regulated business was actually separated from a contractual basis. It
13 also defined all the process flows in the industry. So, until all the process flows had been
14 agreed it was quite difficult for everybody to communicate within the industry about
15 metering.

16 Q I have no further questions, madam.

17 THE CHAIRMAN: Thank you very much, Mr. Shoesmith. You can be released now.

18 (The witness withdrew)

19
20 THE CHAIRMAN: We will have a five minute break before Mr. Way.

21
22 (Short break)

23
24 Mr. MARK WAY, Sworn

25 Examined by Mr. Turner

26 Q Mr. Way, do you have a bundle near you, labelled WS5? A. I do.

27 Q Would you turn in that bundle, please, to Tab 20? On p.2915 you will see a document
28 entitled 'First Witness Statement of Mark Way'. Please turn to p.2935. Can you confirm
29 that that is your signature? A. It is.

30 Q And that the preceding text represents your evidence before the Tribunal? A. Correct, it
31 does.

32 Q If you wait there, other counsel will have questions for you.

Cross-examined by Miss CARSS-FRISK

1
2 Q. Mr. Way, I would like to pick up what you say about the relationship between age and value
3 of a meter. Looking at para. 8 of your statement you say,

4 “First, I consider Professor Grout’s view that normal competition in metering
5 would involve age-based exit charges because (among other things) older meters
6 are in general more prone to failure and are therefore less valuable. For the
7 reasons set out below . . . I do not agree with this view. In summary:
8 On the basis of my experience in managing National Grid’s metering assets I do
9 not agree that older meters are necessarily, or even generally, less valuable or
10 more prone to failure than younger meters. While there is, of course, some
11 increased risk of mechanical failure as the age of a meter increases, the evidence
12 from in-service testing clearly shows that many meters remain accurate for periods
13 well in excess of twenty years; and conversely, some young meters require to be
14 replaced because they are examples of a type of meter that has been shown to have
15 accuracy or other operational problems”.

16 Mr. Way, just homing in on the sentence, “While there is of course some increased risk of
17 mechanical failure as the age of a meter increases”, that really involves accepting, does it
18 not, that, indeed, there is a sense in which older meters tend to be less accurate than younger
19 ones? A. No, that wouldn’t be the case. That would be an over-simplification of the
20 matter, but it is important to look at the meter population itself. It is important to look at
21 individual vintages and manufacture types of meters. It is the condition of the meter that is
22 all-important. Age is not, in itself, a determinant of value. You need to look at the whole of
23 the meter information relating to its condition.

24 Q I appreciate, Mr. Way, that that is, as it were, your general thesis in this statement, but it is
25 very difficult, is it not, to read that middle sentence I have just referred you to in any other
26 way than that it means what it says: There is some increased risk of mechanical failure as
27 the age increases. That is a general statement you are making, is it not? A. There is a
28 general statement that potentially, as the meter progresses through its life mechanical
29 failures can occur at any particular time. We have quite clear evidence from the in-service
30 testing that we undertake that failure can occur much earlier. We have evidence of meters,
31 and it was referred to in my witness statement, where I do say that, for example, Black
32 Square meters, and there are other types, other meters fitted in more recent years, which are
33 much younger meters that have been subject to failure. It would be over-simplifying the
34 matter.

1 Q Mr. Way, I do not think there is any dispute at all that, as you say in your statement, there
2 are examples of younger meters failing. It is simply a question of observing that there is
3 some increased risk of failure as meters get older as a generality? A. We have very clear
4 evidence over a period of an asset's life that – and you have seen in the evidence that I have
5 provided – that meters can last a considerable period of time. Whilst, yes, mechanical
6 failure can occur, it can occur at any time. As the meter does progress through it can be
7 subject to failure, as any device can be.

8 Q I appreciate that your suggestion is really that one should look at the condition of each
9 meter, and if one can assess that that is the best determinant. In the absence of that, it
10 makes sense, does it not, to look at the expected life of a meter and say, well, it is going to
11 be less valuable the older it gets? A. It is important to understand effectively the whole
12 life of the meter. We undertake assessments of meters, of all our types of meters, to take a
13 view as to their whole life expectancy. We have, using Advantica, who are a company that
14 provides a service to National Grid Metering, who provide testing arrangements to evaluate
15 performance of our assets, with a view to being able to determine how long an asset will
16 last. I have given examples in my witness statement of a particular type of meter, the
17 Parkinson Cowan, Schlumberger and then Actaris, all effectively the same meter, but just
18 owned by different companies over the period of time, where they have performed very,
19 very well.

20 Q Mr. Way, what I was suggesting to you was that if you are not able to determine – assume
21 that you are not able to look at the condition of each meter in detail, then at least would you
22 not accept it is perfectly sensible to use age as a determinant of value? A. I'm sorry, I'm
23 a little bit confused by your question. Could you just perhaps repeat that. You used the
24 words "a meter", could you just ----

25 Q Just assume that you are not able to assess the condition of meters perfectly or at all, all I
26 am suggesting is that in those circumstances it makes sense to use the age of a meter as an
27 indicator of its value? A. Okay, but I'm providing an answer relating to information that
28 I have available to me. We are undertaking a ----

29 Q I am asking you to make a different assumption. A. This clearly would be a hypothetical
30 question, and it is one that I would not necessarily have evidence to say one way or the
31 other. The evidence that I have, and in my experience as an asset manager for some
32 considerable time I seek evidence to demonstrate the performance of my assets, such that I
33 can determine when is the appropriate time to commence a replacement programme. So
34 that is my position.

1 Q National Grid had in the past, did have, a policy of replacing 20 year old meters, did it not?

2 A. Prior to my appointment, yes, that is correct.

3 Q Would that not suggest that it was perceived that there was some correlation between age of

4 meter and accuracy/value? A. At the time that that policy was adopted we were in a very

5 different position in terms of understanding how an asset performed during its lifetime. At

6 that stage in-service testing and the way that is undertaken weren't understood. However,

7 what did become available in terms of information was that the meters fitted prior to 1980,

8 these were meters that effectively had leather diaphragms in the meter which were affected

9 by the composition of the natural gas and became very inaccurate. As a result of that, that

10 led to a policy being introduced to commence a replacement programme, and this is where

11 the words "20 year old age replacement programme" first came about. However, in my

12 witness statement I make it clear that in the information that was provided to, firstly, the

13 price control review, to Ofgem, in 1996, 1995, because of problems that had been identified

14 with Fermis(?), synthetic diaphragm meters, the ones that replaced the leather diaphragm

15 meters, there were problems identified with some of those meters, and it was identified that

16 it was necessary to replace those. Again, that was a condition of the meter. It was nothing

17 to do with the age of the meter. These ages varied. I mentioned earlier on, the Black

18 Square meters were around, say, six years old.

19 Q Mr. Way, I do not want to interrupt you but you have had a long chance to make a little bit

20 of a speech there. My question was really this: looking at the policy that Grid had at one

21 stage about replacing 20 year old meters, does that not suggest that at least at the time it was

22 perceived that there was some correlation between the age of a meter and its accuracy/value

23 – at that time? A. I was not in that position at that time to be able to answer that question.

24 This was before my time. I would also say that probably at that time it may well have been

25 determined by the accounting lives, but I have no knowledge to answer, and I do not

26 understand the basis of where 20 came from.

27 Q So you are saying you simply cannot comment in relation to that question? A. I am

28 aware that a 20 year policy in place – that, certainly I'm aware of – but the actual reason

29 that determined that, whilst I could guess, I do not know the reasons.

30 THE CHAIRMAN: So your previous answer that it was to do with replacing the leather

31 diaphragms in the meters that had been installed before 1980, that is a guess, just to take

32 your word. You do not know that was where the 20 years came from? A. I'm very

33 aware of the reason why those leather diaphragm meters required replacement, and that

34 commenced, this programme, in 1980. Yes, that's my position.

1 MISS CARSS-FRISK: Are you aware that in the Legacy MSAs there is a provision for the
2 premature replacement charges to be higher if Grid considers that a disproportionate
3 number of younger meters have been replaced? You are aware of that? A. I am aware.

4 Q Would you not agree that that would tend to suggest a correlation of some sort between the
5 age of a meter and its value? A. My position on that one, as an asset manager I need to
6 manage my entire portfolio of meters. If, for example, older meters were replaced, or
7 indeed younger meters, as a particular chunk of meters to be replaced, that would be an
8 unacceptable way of undertaking it, because I need to look at the overall portfolio that I
9 have in order that I can balance the condition of the meters across their lifetimes, as such.
10 Clearly to undertake the replacement of very young meters will distort that profile and
11 prevent me from being able to manage the portfolio over a longer period. That applies to
12 both younger meters and older.

13 Q It would distort the profile because there is a relationship between the age of the meter and
14 its condition, so you want a balance? A. No, it's balancing the condition. It's important
15 that I'm able to ensure that the condition of the meters – bearing in mind the legal
16 obligations that are there as set down by the Gas Act requiring me to keep meters in proper
17 order, and as specified in the Gas Meters Regulations, which states the accuracy ----

18 Q What is the relationship between condition and younger meters then? A. Sorry, I don't
19 understand.

20 Q What is the relationship between condition and younger meters? A. The relationship, as I
21 mentioned, relates to the overall portfolio of the assets. Younger meters, by itself, to simply
22 take a chunk of meters, is distorting that population, that overall profile, as I explained.

23 Q So why does it not matter equally if a disproportionate number of older meters is being
24 replaced then, there is no penalty for that? A. It does matter, it matters on the basis that
25 during – you have seen some of the information provided – that British Gas's CMOs,
26 certainly in the earlier period were undertaking a programme of replacement based on age,
27 and I identified concerns at that early stage (this was before the MSAs came into place) and
28 I provided information to British Gas at that time to say: "Look, if you are going to replace
29 meters please replace the condition meters that are needing to be replaced, not based on age
30 because it will not achieve what I need to do in terms of balancing that overall portfolio."

31 Q Just focusing again on the MSAs, and you have accepted you are aware that there is
32 provision to increase PRCs if a disproportionate number of younger meters are removed.
33 Do you also accept there is no equivalent provision if a disproportionate number of older
34 meters are renewed? A. Under the MSA contracts there is effectively an allowance for

1 policy meter replacement. The policy meters are defined by National Grid Metering to
2 identify what those are. Where older meters are replaced they are not necessarily policy
3 meters and therefore as a result of that it could potentially impact upon the glidepath and, as
4 a result of impacting on the glidepath then it could result in additional charges.

5 Q Yes, but there was no specific provision equivalent to the one that relates to the replacement
6 of a disproportionate number of younger meters. There is no equivalent provision in
7 relation to older meters, is there? A. I will answer that question and just qualify that one.
8 The answer would be “no”, however, you do, again, need to consider the fact that it is not
9 necessarily the condition that those meters have been replaced.

10 Q Could you go, please, to para.13 of your statement, where you comment on Professor
11 Grout’s report. You say:

12 “I do not agree with Professor Grout’s assumptions that older meters are
13 necessarily, or even generally, less valuable or more prone to failure than younger
14 meters; or that one would expect National Grid to encourage suppliers to
15 concentrate their replacement efforts on older meters rather than meters that are
16 faulty or are prone to inaccuracy.”

17 Now, I just want to focus on the last bit of that sentence, about expecting suppliers to
18 concentrate replacement efforts on older meters, rather than meters faulty or prone to
19 inaccuracy. Professor Grout, I would suggest to you, does not say that that should be
20 encouraged at all, there is nothing in his report that suggests that suppliers should be
21 encouraged to go for older meters rather than faulty or inaccurate meters. Would you be
22 prepared to accept that? A. My understanding of the way that I have read Professor
23 Grout’s witness statement is that he is making reference to the replacement of older meters
24 and tying that in with value.

25 Q Well perhaps we ought to look briefly at his report, it is WS4, if that could be provided to
26 you, tab 9. Are you able to point to any paragraph in this report which you say supports the
27 statement you have made, where you say you do not agree with him in para.13? A.
28 Without wading through the entire document it is difficult for me to say here and now. My
29 understanding and the way that I read the Professor Grout document was as I mentioned in
30 my witness statement.

31 Q Well if we look at the end of para.27 of this report, if you have that? It starts on p.2139. He
32 talks about failing meters, you see at the beginning of para.27 he says:

33 “Lastly, the question arises of how failing meters would be dealt with under rental
34 contracts in normal competition.”

1 And right at the end he says:

2 "In my view, under normal competition rental contracts would therefore be likely
3 to include the feature that there would be no PRCs for meters that fail to perform
4 adequately."

5 THE CHAIRMAN: Am I right in thinking then that the age related counterfactual included
6 provision that what we refer to as policy replacements would not be subject to ----

7 MISS CARSS-FRISK: That is right

8 THE CHAIRMAN: -- premature replacement?

9 MISS CARSS-FRISK: That is exactly right. And so on the assumption here that an age
10 replacement approach would allow faulty and inadequately performing meters to be
11 replaced free, then there is no suggestion, is there, that you would replace older meters
12 instead of replacing faulty or inaccurate meters? A. Under the MSA contracts, meters
13 which are policy meters as defined under that contract are able to be replaced free of charge.

14 Q Mr. Way, I was simply talking about Professor Grout's analysis of a counterfactual age
15 related approach and simply putting to you that you are not right when you suggest that he
16 says one should replace older meters rather than faulty or inaccurate meters. He is
17 suggesting that one could do both on an age related approach, do you see? A. Exactly
18 how Professor Grout sees this working I have no idea. What I can comment on is how it
19 works as far as my role as an asset manager is concerned. It is that basis that I would
20 answer that question.

21 Q But Mr. Way you have set out to comment on Professor Grout's statement in your
22 statement, and that is why I am asking you simply to accept that you appear to have
23 misunderstood one aspect of his evidence in your para.13? A. My understanding of the
24 way that Professor Grout sees this is that he is considering that age as such, and indeed a
25 meter that is failing in the terms which I will assume to mean a policy meter, on that basis
26 he sees that that should be free of charge, I'm arguing is that it should be the condition of
27 the meter that is all important. The PRCs that work under the MSA contracts are for meters
28 that we have identified that required replacement for condition reasons.

29 Q And Professor Grout's analysis would equally allow that such meters could be replaced free
30 as a separate matter from the replacement of meters based on age? A. The point being,
31 and I would refer ----

32 Q Do you agree? Sorry, do you agree that that is indeed the effect of Professor Grout's
33 evidence? A. No, I would go back again to where I stood before, in that age is not

1 necessarily the reason why a meter should be replaced. A meter can be older and can be
2 performing perfectly adequately, so there is no need to replace a meter simply due to age.

3 Q Yes, Mr. Way, one last time and then I will move on. The only point I have been asking
4 you about on para.13 of your statement is where you suggest that Professor Grout says that
5 one should encourage suppliers to replace older meters rather than meters that are faulty or
6 prone to inaccuracy. All I have suggested to you, and I hope you would agree, is that that is
7 not what he is suggesting, he is saying faulty and inaccurate meters is a separate matter.
8 They can be replaced free on his analysis. A. I am failing to quite understand your point
9 here. Perhaps you could ----?

10 THE CHAIRMAN: I think you have pushed that as far as you can go.

11 MISS CARSS-FRISK: I think so too, madam.

12 THE CHAIRMAN: I think it should be a matter of submission.

13 MISS CARSS-FRISK: Mr. Way, looking at the figure in your statement at p.2921, you have a
14 graph there showing the accuracy of various meters. If you look at that, on the left-hand
15 side you have the percentage of age of meter outside the relevant tolerance of plus/minus 2;
16 is that not right? A. Yes. The percentage.

17 Q Percentage. Yes. You have told us, I think, in para. 18 that the results for 1980 and 1981
18 should not be seen as reliable. A. Correct.

19 Q If one compares what happens for meters installed before 1996 to meters installed after that
20 time, then it is right to say, is it not, looking at the graph, that a higher percentage of meters
21 installed before 1996 on the whole is outside the tolerance band. Then it goes down for
22 meters installed after 1996. A. I would answer that question on the basis of saying that
23 this information relates to one type of meter.

24 Q Yes, but am I right in what I have just suggested? A. Whilst it is true that in this
25 particular case relating to Parkinson Cowan meters that are here that the level of inaccuracy
26 as shown is a higher proportion in the older years as shown the earlier years (sic),
27 nevertheless, in terms of that meter's performance, in comparison with other meters of other
28 younger vintages -- any particular age as such -- they are still performing adequately --
29 perfectly adequately, and, indeed, in comparison with the threshold which we set for
30 replacement (which, as mentioned in this diagram here, is set at 30 percent), those meters
31 have not reached the threshold for replacement.

32 THE CHAIRMAN: Is this meter that this relates to one of the meters which has ended up in the
33 policy replacement batches? This is not one which it is thought has accuracy problems
34 generally? A. That's correct. The meters shown here are good performing meters.

1 MISS CARSS-FRISK: Yes - although, as you have accepted, one does get a correlation between
2 age and a lower degree of accuracy. A. When taken in isolation, then that is the case, but
3 you do need to compare with other meter types of differing ages in order to determine what
4 meters should be prioritised for replacement.

5 Q If one looks at what has been called in this case 'discretionary meter replacement', i.e.
6 moving beyond such meters as have to be replaced because they are faulty or inaccurate -
7 what National Grid would call policy meters - does it not make sense there to apply a
8 criterion of age as a determinant of which meters to replace? A. No, it doesn't - for the
9 reasons I mentioned before. We need to look at the overall condition of the entire meter
10 population, and there could be meters, and there are indeed meters, within the population
11 which show levels of inaccuracy, or, indeed, other reasons of condition, that are worse than,
12 for example, as shown on the graph, the Parkinson Cowan meters in the earlier years. So,
13 therefore, it would be a sub-optimal decision to take to replace meters based on age. It must
14 be based on condition.

15 Q Despite the correlation between age and accuracy. A. I'll come back to my answer. The
16 meters, as shown in this diagram, in the earlier years show levels of accuracy which do not
17 reach -- and, indeed, we would not even be projecting for those meters to be inaccurate.
18 These particular meters as shown here have an expected life considerably longer than
19 twenty-four/twenty-five years, and probably going on beyond that. It will be other reasons
20 of condition that may well result in eventual replacement.

21 Q Mr. Way, I suspect we could be debating this for ever. Moving on to what you say about
22 the new policy that Grid is thinking of introducing - starting at para. 50 - you refer there to
23 an expert sub-group of the Industry Metering Advisory Group -- IMAG. As I understand
24 that paragraph, that group has really been looking at what sort of policy should apply to new
25 meters following the implementation of the relevant EC directive; is that right? A.
26 Correct.

27 Q So, the group has not been looking at what sort of policy might apply to Legacy meters.
28 A. The group is aware of the issue relating to Legacy meters, but the discussions that have
29 taken place relate to new meters coming on to the market, as you quite rightly say. But, in
30 addition to that they have been mindful of the impact that this has relating to meters which
31 are not covered under the Instrument's directive.

32 Q Is it your view then, within National Grid, that this new approach - even though the group
33 has only looked at it in relation to new meters - should apply to Legacy meters or older
34 meters as well. A. That would be the case. If I can perhaps just explain the reason for

1 that: The principles of output base measures, as proposed and suggested, are a good way of
2 taking this forward and making the right decisions. The key issue that this created relating
3 to the Measurement Instruments Directive (that new legislation) is that it allows meters and
4 the level of accuracy to be plus or minus 3 percent. So, it is a relaxation of the rules that
5 apply for meter accuracy compared to 2 percent. You know, just providing an example as
6 to how this would work, potentially a CMO, for example, could be going out replacing a
7 meter which is being replaced within plus or minus 2, or just outside, and be replacing it
8 with a meter, if it was a meter covered under the Measurement Instruments Directive, which
9 has to perform to within plus or minus 3. Potentially those meters could in fact be more
10 inaccurate than the meter that it is replacing. So, it clearly needs to have some joined-up
11 thinking as to the way that this is working. We have taken the opportunity, as part of the
12 work with the Measurements Instruments Directive, and discussions then that have been
13 had with Ofgem, that we should be seeking to provide a solution which is consistent with --
14 I would say there is no arrangement in place that actually specifies when a meter should be
15 replaced. So, we are therefore trying to put something in place which provides a level of
16 consistency and joined-up thinking for this to operate.

17 Q It is fair to say, is it not, that you are in dialogue with Ofgem -- or, certainly have been in
18 dialogue with Ofgem about this? A. Correct.

19 Q And Ofgem have expressed reservations about this new policy that you have been
20 proposing? A. They've not expressed reservations to me.

21 Q Could you take up bundle CR2, tab 107. At tab 107 do you see a letter dated 30th January
22 2008? A. I do.

23 Q From John Stevens, technical advisor at Ofgem, to Eric Fowler, regulation manager at
24 National Grid, and one sees that it refers to the policy exchange of National Grid meters.
25 Perhaps you would like to just take a moment, if you have not seen this letter before, to read
26 it through. A. Okay. (After a pause) Yes.

27 Q If one looks at the fourth paragraph on p.575, Ofgem is making it clear that applying
28 "... the new IMAG report criteria across the entire NGM meter population would
29 mean testing against enlarged accuracy limits which have no basis in law."

30 Were you aware that that was Ofgem's view? A. I was not aware of this particular
31 document. That's the position.

32 Q Were you aware that that was their view, that there was a concern as to whether there was a
33 basis in law for applying a new policy, as you envisaged, to all the meters? A. Right. As
34 I mentioned earlier on, what we are talking about here is the point at which a meter is set for

1 replacement. The plus or minus 3 per cent is a potential threshold level that could be set.
2 We currently have a threshold, or previously operated a threshold, where 30 per cent of the
3 meter population was outside of plus or minus 2 per cent. We were seeking, and the
4 proposal is, that we should change that arrangement to an output based arrangement where
5 95 per cent of the meters should perform within plus or minus 3 per cent. That is the basis
6 of doing it. Since that time we have sought to make changes to our policy to provide more
7 flexibility in the way that it is working using this output based approach and working to this
8 level of 95 per cent plus or minus 3 for determining ----

9 Q Yes, but my question was whether you were aware, even though you have not seen this
10 particular letter, that Ofgem has a concern as to whether there is a proper basis in law for
11 having that policy? A. I was not aware of this particular point, but as I said before the
12 threshold is the key point. As I mentioned in my witness statement ----

13 THE CHAIRMAN: Mr. Way, please try and focus on the question that you are being asked. You
14 are being asked, although you have not seen this letter before, were you aware that Ofgem
15 have concerns about the basis in law of National Grid changing its method of assessing
16 whether the stock is within appropriate tolerance in terms of accuracy? A. I wasn't aware
17 of that.

18 MISS CARSS-FRISK: You were not aware of that. At any rate, so far as you are aware, the
19 policy has not been implemented yet? A. The policy, in terms of making replacement
20 decisions, has been implemented. We have identified meters that are able to be placed into
21 policy replacement pools that provide additional numbers for CMOs through the gas
22 supplier to undertake replacement, so that is in operation.

23 Q Has it been agreed, actually implemented, with any gas supplier, because in your statement
24 you refer to communications with British Gas in particular, but the impression one gets is
25 that this is being discussed. Are you now saying it has gone beyond that? A. It is being
26 operated with British Gas to undertake policy replacement programmes. It is also being
27 operated with another gas supplier in that regard.

28 Q Which supplier is that? A. That is with Eon.

29 Q So when do you say this policy was implemented then, first implemented? A. That was
30 implemented – when I went to see Ofgem on 10th May 2007, that was where we first
31 provided information to say that we were proposing to implement that arrangement.

32 Q You may have put proposals at that point, but the question is when did you actually start
33 applying this policy that you now say that you are actually at this moment applying?
34 A. That was applied at that time. It was commenced immediately.

1 Q The 10th May 2007? A. Correct.

2 Q You do not mention that in your statement. In your statement you talk about discussions
3 about these things. Let us look at para.55:

4 “In the absence of any clear advice from Ofgem to the contrary, National Grid has
5 continued to progress its proposals for an ‘output’ based approach.”

6 Then at para.56:

7 “This has proven to be very successful and has already been discussed with E.ON
8 and British Gas. It has been necessary on all occasions to point out to gas
9 suppliers that should Ofgem choose to progress an accelerated replacement of the
10 700,000 older PME meters it would be necessary to withdraw the flexibility in
11 order to meet Ofgem’s expectations.”

12 The impression one gets is of discussions but not an actual decision to do this? A. The
13 discussions certainly had taken place, and in terms of selecting the meters for replacement,
14 those are in line with the output based approach, and that was made clear to Ofgem at our
15 meeting that was held in May 2007.

16 Q If you look back at the letter at CR2, tab 107, Ofgem is writing to Mr. Fowler at National
17 Grid at the end of January 2008 on the basis that there are proposals for certain things to
18 happen, but certainly at that stage in 2008 they were only proposals? A. For the purposes
19 of selecting meters – and I would say that this is for setting the threshold to identify meters.
20 The meters that are used still effectively are the most inaccurate meters, and those are the
21 ones that we are seeking to replace.

22 Q So would it be right to say that you have taken preparatory steps, but you have not actually,
23 as yet, proceeded to final go-ahead on this? A. No, we are operating to that arrangement
24 in terms of identifying meters and requesting replacement of those meters.

25 Q Madam chairman, I understand that there was correspondence – recent correspondence –
26 confirming that this policy was still only at proposal stage, so may I just take a moment for
27 us to try to identify that? As you can appreciate this came as a bit of a surprise to us?

28 THE CHAIRMAN: Let me just be clear, Mr. Way, as to what you say has been happening since
29 10th May. Is this right, that insofar as National Grid has to create the pool from which the
30 policy meters are chosen by the gas supplier, this is this 1:1.3 ratio – or a different ratio – in
31 deciding which meters to put into that pool you have been applying, or choosing on the
32 basis of a 3 per cent tolerance level ---- A. No.

33 Q -- rather than a 2 per cent tolerance level? A. No, that is not the case. We have been
34 applying based on the accuracy of the meters that we see. So, for example, meters that fall

1 within the plus or minus 2 category being the most inaccurate meters, they are included for
2 replacement. In addition to those meters we are including other meters which are less
3 inaccurate, but nevertheless including those into the pools to enable replacement to be
4 undertaken. So we are providing them with a wider pool to make a choice from and the gas
5 supplier, we give them the choice, we say to them: "You could undertake a very focused
6 approach to replace the most inaccurate meters, because what we are seeking to do is to
7 provide an incentive to go at the most inaccurate to undertake a replacement. So they could
8 choose to take a minimum scenario and replace a few policy meters; or alternatively they
9 could decide to go for a wider pool, a "maximum pool", as we have termed it, where some
10 of the more inaccurate meters are provided with, in addition to those, less inaccurate meters
11 to provide a wider pool and so the most inaccurate meters are effectively able to be
12 positioned and other less inaccurate meters clustered around those in order that replacement
13 is undertaken the most effective way.

14 So in terms of just clarifying this position I would say that that is the way in which we have
15 undertaken it, for the purposes of measurement it is plus or minus 3 per cent. I am not
16 saying that we have unilaterally ignored the law, for example, as to where it is because the
17 consumer still has the right to have their meter tested, and that should perform within plus
18 or minus 2 per cent. What we have simply done is provide the potential for more flexibility.
19 We have offered a choice of a small volume or a larger volume in order to manage the
20 overall accuracy of the population that we operate.

21 The meters, to be quite clear, that are outside of the plus or minus 2, those are included for
22 replacement. All we are simply doing is including additional meters which we would
23 otherwise not normally have provided. We are putting those into the pool to provide for
24 additional flexibility. I am sorry if this is causing confusion but perhaps I do not understand
25 the question.

26 Q Well focusing on what you said a few answers back about how this policy was implemented
27 back in May 2007, can we agree as at early 2008, it certainly was being portrayed in
28 correspondence as being at the proposal stage? A. It is in correspondence in terms of the
29 way in which the IMAG group eventually take forward those proposals.

30 MISS CARSS-FRISK: Just in terms of the proposals for your policy at National Grid, if you
31 look, for example, at CR2, the correspondence bundle, tab 118, 20th February 2008, you see
32 Ofgem writing there to National Grid:

1 “I refer to your letter dated 19 February...[which we have at tab 107] ... regarding effect on
2 MSAs of National Grid’s proposed change to an output based regime for specifying policy
3 replacement meters.”

4 So would you agree that it was certainly only a proposal, it appears, at that stage?

5 A. Those are the words clearly used by Ofgem in that particular case. The proposals relate
6 to moving to an arrangement of 95 per cent plus or minus 3. I think where there is
7 confusion here is the threshold, the level. There has been some debate and discussion
8 regarding the levels, the 95 per cent, plus or minus 3 per cent, and those are the proposals
9 where there is not certainty. However, we have implemented an arrangement as I
10 explained.

11 THE CHAIRMAN: Is the proposal that is being referred to here, which is moving away from the
12 plus or minus 2 per cent tolerance to the plus or minus 3 per cent tolerance, is that proposal
13 the same proposal as you are saying you implemented in May 2007? I do not think it is?

14 A. No, we have no intention of moving away from plus or minus 2 per cent. It is purely the
15 threshold at which we seek to identify meters’ replacement.

16 Q Which is just an internal National Grid choice as to how you are going to choose those?

17 A. We have put proposals through to Ofgem as to what those levels should be, and those I
18 would agree have not been agreed, those are in square brackets in cases. But in the interests
19 of pursuing something that provides additional flexibility into the market place we have
20 gone with this 95 per cent plus or minus 3, to measure and effectively to identify meters to
21 include into the pool, and those meters, quite clearly on that basis, will be meters which are
22 not as inaccurate as the ones that were in the original ----

23 MISS CARSS-FRISK: Well, Mr. Way, it may be that that is as far as we can take it, certainly
24 consistently with trying to get through the evidence today if we can. Those are all my
25 questions.

26 THE CHAIRMAN: Thank you, Mr. Way, just wait there. Mr. Vajda, do you have anything you
27 want to ask Mr. Way?

28 MR. VAJDA: No, thank you, madam.

29 THE CHAIRMAN: Mr. Randolph?

30 MR RANDOLPH: No, thank you, madam.

31
32
33 MR SUMMERS: Good morning. Can I be clear how you would define the age of a meter?

34 A. By the year of manufacture.

1 Q And what, would you say is the length of time that would be characteristic before a meter is
2 installed, i.e. the gap between it being manufactured, leaving the manufacturer's premises
3 and actually being installed by you? A. It should be within weeks, maybe months.

4 Q Right. Do you carry extensive stocks of meters? A. I would not say they are extensive,
5 we seek to minimise the level that we hold at any time for good business reasons, but
6 nevertheless because we have a Gas Act obligation to have meters reasonably available,
7 clearly we have to make sure we have sufficient.

8 Q Do you still have stocks of imperial meters? A. No.

9 Q Just moving to another topic. You mentioned earlier in connection with the previous policy
10 of replacing 20 year old meters that it might have had some relationship to accounting life,
11 the accounting life of the meter, do you know what the current accounting policy is for the
12 life of meters? A. I believe it's in line with the MSA contract - so, for example, eighteen
13 years has been typical.

14 Q So, they are written down over eighteen years? A. One would expect assets to be retired
15 both in and out of life.

16 Q Thank you very much.

17 PROFESSOR STONEMAN: A little bit earlier in the argument over age you said that really
18 meters should be replaced on the basis of condition rather than age; that the efficient
19 process would be to replace on the basis of condition rather than age. Now you are well
20 aware that the MSA has built into it a linear glidepath. A linear glidepath, if that was built
21 upon replacement in terms of condition rather than age, would imply that the stock of
22 meters at the date on which the MSA was signed was equally divisible into eighteen parts in
23 terms of condition. Yes? There would be rectangular distribution over the condition of the
24 meters. One-eighteenth would be good, one eighteenth would be poor, and you would
25 replace one-eighteenth each year. Now, to what degree does the condition of the meter stock
26 on the basis of condition justify a linear glidepath over eighteen years? A. We look at the
27 entire population and then seek to prioritise the meters that require replacement. There may
28 be no meters requiring replacement, in which case the numbers of meters available to the
29 gas supplier for replacement therefore become all discretionary, shall we say, in that
30 example. So, it will depend upon the proportion that we identify as being required for
31 policy replacement for reason of accuracy as to how it is selected. But, based on the
32 information we had when setting the MSAs that were in place were first introduced, looking
33 at the portfolio that was available on 1st January, 2004, looking at the projections that we

1 had for the condition of those meters, it would be consistent with an eighteen year
2 glidepath.

3 Q So, just to confirm this, you are saying that in January 2004 the distribution of existing
4 meters within National Grid was rectangular basically, but that 5.5 percent of them -- It was
5 not the case that there were a very large number of good meters and a small number of bad
6 meters. It was just that they were equally distributed over meter quality. A. There were
7 some meters which were more inaccurate than others, and quite clearly those form part of
8 our projections for policy meter replacement over the period. Clearly I can't have perfect
9 vision for eighteen years, but based on what we had experienced in the past we believe that
10 the policy replacement for accuracy and condition could be contained within an eighteen
11 year glidepath.

12 Q No, I do not think that is the point. The point is that it can be contained, but should it be
13 linear? A. (After a pause): I suppose the policy meter replacement is not linear. We
14 would expect jumps and bumps throughout that period.

15 Q But the MSA is linear. A. It is.

16 Q You said that if replacement was based upon quality that would be efficient. (After a
17 pause): If replacement was based on condition, that would be efficient. A. Yes. It
18 comes down to prioritisation. You will have some more inaccurate meters than others.
19 Therefore, the way in which meters should be replaced should reflect that prioritisation.

20 Q Yes. We accept that more accurate than others, but you said that you should replace the
21 most inaccurate first. A. Correct.

22 Q But, National Grid signed an MSA with an eighteen year linear glidepath. A. Yes.

23 Q That implies that the distribution of meters can be split up into eighteen neat, separate
24 segments relating to accuracy. It is not a bell-shape distribution. It is a flat distribution. If
25 we were to argue that the MSA was efficient in terms of your criterion of replacement in
26 terms of condition rather than age. What I am saying is that I am quite happy to go along
27 with you to say that in some sense it is efficient to replace in terms of condition rather than
28 age, but I am then asking you whether that is consistent with having a linear glidepath over
29 eighteen years. A. I believe it is from the basis that I cannot project eighteen years out to
30 know exactly which meters are necessarily the ones that are inaccurate at that time. But,
31 based on the evidence that I had prior to that time, it is suggested that that was a way of
32 working.

33 Q Thank you.

1 THE CHAIRMAN: In your statement I quite see that you say that if you are looking at the whole
2 Legacy stock of meters age may not be a good correlation, or a correlation at all with
3 accuracy because you have these meters which you have bought - the Black Square or the
4 Black Spot meters - and installed where it later appears that there is a problem with them.

5 A. Yes.

6 Q Those then form the policy meters. I just want to be clear what your evidence is. If you
7 take all those meters out of the equation so that you are looking at those meters in the
8 Legacy stock where you have not identified that they are a kind of meter which has been
9 shown to be particularly prone to problems because of whatever design fault. Looking at
10 the balance of the meters, is it still your evidence that those do not become more likely to
11 become faulty as they get older? A. No. As is shown in that graph that was shown, that
12 particular meter type demonstrates the very good performance in terms of accuracy. Other
13 meters demonstrate differing performance. In fact, what we look to do is to review the
14 performance of those assets in terms of its condition, its accuracy, and make projections as
15 to when a meter should be replaced.

16 Q So, if one took out of the equation, as I say, the policy meters and was looking at the
17 balance of the stock where there is nothing particularly which has been found to be wrong
18 with that make of meter, what would be a sensible criterion to apply to those meters to
19 decide in what order to replace them? A. Based purely on condition by looking at the
20 accuracy - or, indeed, other factors such as operational issues that may have come up - but,
21 primarily accuracy. So, you can rank that meter against any other meter. So, irrespective of
22 the age of the meter you are looking at the condition and then prioritising within that. In that
23 way we ensure that we effectively maintain our meters in the most accurate state as
24 possible.

25 Q When you discover that a particular brand of meter is not working terribly well and has to
26 go into the policy replacement is there any comeback against the manufacturer in relation to
27 those? How does that work? A. Yes. In the situation of the Black Spot and Black
28 Square meters which are referred to, there was a legal action which reached arbitration in
29 that particular case. That was back in the late 1990s/2000. There was action taken, although
30 I would say that the level of recovery was not as much as we would have expected.

31 Q I meant more in terms that you then can ensure that the same problem does not arise in the
32 next version -- or, the more up-to-date version of that meter. Can they iron out the problem
33 that has been identified? A. Indeed. Those meters that are referred to - the Black Square
34 and the Black Spot meters - were purchased before I was actually employed in this

1 particular position. Certainly we have been primarily purchasing the Parkinson Cowan/
2 Schlumberger/Actaris meter which, as you can see from the lessons learned, is a very
3 reliable product, and on that basis we primarily purchased that meter. So, lessons have been
4 learned and changes, where there have been issues, have been identified. So, for example,
5 the diaphragm material that was used in the UGI meters (the Black Spot meters) etc., those
6 were eventually changed and whilst UGI were producing meters they changed to the same
7 material that was used by Actaris.

8 Q Thank you. Mr. Turner, any re-examination?

9 MR. TURNER: It will take about five to seven minutes, madam.

10 THE CHAIRMAN: Go on then.

11 Re-examined by Mr. TURNER

12 MR. TURNER: Mr. Way, you were asked where in Professor Grout's report he suggested it
13 would be normal to expect replacement of older meters rather than meters that are faulty or
14 prone to inaccuracy. Do you recall that? A. Yes.

15 Q And Miss Carss-Frisk took you to one paragraph then in Professor Grout's report. Can I
16 ask you to pick up again WS4 and turn in it to tab 9, which contains Professor Grout's
17 statement, and turn to p.2138 and read two other paragraphs of the report, paras.23 and 24,
18 to yourself, particularly 24. A. (After a pause) Yes.

19 Q Do those other paragraphs there help you in linking your evidence at para.13 of your
20 statement to what Professor Grout says in his report? A. Professor Grout is referring to
21 ages, in that age is a reason for replacement in terms of its value, and, as explained, I do not
22 believe that that is an appropriate measure in view to maximise condition.

23 Q The second question is this: you were questioned about the graph in your own witness
24 statement – could you put that bundle away and go to ----

25 THE CHAIRMAN: Can I just ask you before you put that bundle away, in Professor Grout's
26 report he says in that paragraph:

27 "... because of the increased risk of failure as meters get older, older meters are
28 less valuable than younger meters."

29 I notice in your witness statement that you deal with value and proneness to failure as
30 alternatives, but I wonder whether there is anything in that. In your statement, para.8(a) you
31 say on the basis of your experience you do not agree that:

32 "... older meters are necessarily, or even generally, less valuable or more prone to
33 failure than younger meters."

1 Is there a difference then between you and Professor Grout as to whether there are other
2 factors, other than proneness to failure, which determine value? A. I can only really
3 determine in terms of accuracy and, as I mentioned, we have many younger meters which
4 are not as reliable or accurate as older meters, and the older meters, therefore, have greater
5 value in that circumstance.

6 Q So you are not saying that there is any other characteristic which determines value other
7 than their accuracy and proneness to failure? A. The only other things that could happen,
8 for example, if there was a safety problem then that would require the meters to be replaced,
9 not that we have experienced such an issue; or that there are operational issues and
10 problems.

11 THE CHAIRMAN: I am sorry, I interrupted you, Mr. Turner.

12 MR. TURNER: Mr. Way, along the lines of Madam Chairman's question, could you turn on in
13 your statement to the graph on p.2921 of the bundle numbering, just above the heading
14 "National Grid's condition-based replacement policy". If you could look at para.18 on the
15 facing page and read that again to yourself again for a moment, could you explain what the
16 graph is illustrating as regards making replacement decisions for these sorts of meters?

17 A. This is demonstrating these particular meters which form the majority of National
18 Grid's stock are performing at a level which is acceptable and does not reach the
19 replacement criteria which, as I've mentioned and is shown here, is where 30 per cent of the
20 population goes outside of plus or minus two. There is no evidence to suggest here that any
21 of the meters shown require replacement.

22 Q Could you turn to para.50 of your statement on p.2930 on which you were questioned. This
23 is about the so-called "output-based approach" that was described at first as a policy that
24 National Grid is thinking of introducing. A. Yes.

25 Q You were shown a letter from Ofgem in bundle CR2. I would like to show you the
26 response to that letter in the same bundle. Could you take up CR2. A. Yes, I have that.

27 Q The response is at tab 117, beginning on p.600, from National Grid back to Ofgem. Do you
28 have that? A. I do, yes.

29 Q Can you read the first sentence but then cast your eye over the letter as a whole, and I am
30 going to ask you a question about it. (Pause for reading) I should just say for the record,
31 madam chairman, we do not believe that we have been given a response to this letter. But
32 Mr. Way, is this a letter that you have seen before? A. No, I have not.

1 Q I want to ask you only three things about it, in case there was confusion. The first relates to
2 the timing, can you comment on whether this policy has been or will be applied and, if so,
3 when?

4 THE CHAIRMAN: Which policy?

5 MR. TURNER: The output based approach to policy replacement; the new system that they were
6 describing in this letter? A. The output based approach for the selection of meters for
7 replacement has already been introduced.

8 Q When? A. For the selecting of meters to include into the policy meter pools that would
9 have been as I referred to previously in 2007.

10 Q Well, read again the first sentence of the letter? A. You are referring to the letter ----

11 Q The letter you have just read at p.117? A. That is referring to April 2008, yes.

12 Q Is that correct, or can you comment on that? A. That relates to the forthcoming financial
13 year at that particular time, and there will be replacement programmes to be operated and I
14 assume that is what that is regarding.

15 Q Can you clarify whether the output based approach applies to only new meters, or also the
16 installed base? A. The output based approach applies to existing meters already in situ.

17 Q Finally, in argument there was discussion about a move from a plus or minus 2 per cent to a
18 plus or minus 3 per cent accuracy threshold. There is another element here. If you look on
19 the second page of the letter at the third full paragraph beginning: "In your letter you query"
20 it refers to using a plus or minus 3 per cent accuracy within an output regime. That is not
21 immediately obvious to people who are not in the business. Could you explain the
22 difference between an output based regime and an input one, which was the previous
23 situation? A. Under an input based regime, you are simply looking at a specific batch of
24 meters when you determine that a proportion of them are reading outside of the acceptable
25 tolerances, so that is targeted specifically and you are required to replace just those meters.

26 THE CHAIRMAN: Is that particular batches of meters of the same brand? A. Yes, so it might
27 be a particular year of a particular type of meter, the so-called "black square" meters were
28 selected on that basis. Under an output based regime, this seeks to look at the overall
29 population of the meters, so all meters that are available and then seek to achieve an output
30 for the overall population such as, for example, 95 per cent of that population read within
31 plus or minus 3 per cent. So you are achieving an output, rather than concentrating on
32 specific meters, you are looking at output that is achieved.

33 Q You are most likely to achieve your output if you identify and concentrate on replacing the
34 worst meters? A. Absolutely. The beauty of an output based approach is that you are

1 able to select those most inaccurate meters, and then cluster other less inaccurate meters
2 around it to provide better density and more efficiency to the person replacing.

3 Q My last question arises from Professor Stoneman's question to you. Can I ask you to turn
4 up WS4, which is the bundle containing the expert reports and other statements for other
5 parties, and look at tab 8, which is Ofgem's expert, Mr. Keyworth, and go to p.2082. At
6 the bottom of p.2082 there is a footnote, footnote 18, it is one sentence – would you read
7 that sentence? (After a pause) Now, are you aware, Mr. Way, of the relationship between
8 the amount of free replacements each year under the MSA agreement on an even path, and
9 the level of policy replacements, which are envisaged each year under the Legacy MSA
10 agreements, how they relate to each other? A. Yes.

11 Q Could you please clarify that to the Tribunal? A. The overall numbers such as effectively
12 2 per cent – if you imagine one-eighteenth equivalent to 5.5 per cent, 2 per cent of the
13 population of meters at that time within this portfolio are effectively discretionary meters,
14 for want of a better word. The balance could be used as policy meters.

15 MR. TURNER: I have no further questions.

16 THE CHAIRMAN: Thank you, Mr. Turner. Thank you very much, Mr. Way, you are released.

17 (The witness withdrew)

18 THE CHAIRMAN: Now, after the short adjournment then we move to?

19 MR. TURNER: Mr. James, who is another National Grid witness, and then the remaining factual
20 witness is Miss Frerk of Ofgem.

21 THE CHAIRMAN: Then we must really try and finish Mr. James's evidence this afternoon,
22 would that then keep us within the timetable, or do we need also to make a start on Miss
23 Frerc.

24 MR. TURNER: I understand from Miss Carss-Frisk she expects to be only around a day with our
25 experts, and if that is so then there may be a little scope for us to catch up without having to
26 start early tomorrow morning. The nature of Mr. James's cross-examination is not within
27 my control.

28 MISS CARSS-FRISK: I must say, madam, that may indeed have been over optimistic, as I have
29 tended to be throughout in terms of the witnesses of fact in this case.

30 THE CHAIRMAN: Very well we will resume at 20 past 2.

31 (Adjourned for a short time)

32 THE CHAIRMAN: Before you call your next witness, Mr. Turner, just to indicate on timing, the
33 Tribunal is able to, and is prepared to sit, on the Thursday of next week, preferably only in
34 the morning, but we could, at a pinch, sit all day to finish off next Thursday. If we had not

1 finished by Wednesday evening that would be our intention. Thereafter, it may well be
2 quite some time before we can re-assemble this panel. So, the parties should bear that in
3 mind - that next Thursday should be kept free to complete this case and that we should
4 absolutely do so by that deadline.

5 MR. TURNER: Madam, we will endeavour to do that.

6 THE CHAIRMAN: Thank you.

7 MR. TURNER: The last National Grid witness to be called for cross-examination is Mr. David
8 James.

9 Mr. DAVID JAMES, Affirmed

10 Examined by Mr. Turner

11 Q Mr. James, do you have a bundle marked WS1? A. Yes.

12 Q Could you open WS1 and in it turn to Tab 3? You will see a document beginning 'First
13 Witness Statement of David James'. A. That's correct.

14 Q If you turn on to p.792, is that your signature half-way down the page? A. That's correct.

15 Q Does the preceding document represent your first witness statement in these proceedings?
16 A. That's correct.

17 Q Will you open Bundle WS5, please? In this would you turn to Tab 19? Do you see a
18 document entitled 'Third Witness Statement of David James'? A. That's correct.

19 Q Can you please turn to p.2899 in that bundle? (After a pause): Do you see a signature at
20 the end of that document? A. Yes.

21 Q Is that your signature? A. It is.

22 Q Is this also your evidence in the proceedings - your third witness statement? A. That's
23 correct.

24 Q Madam chairman, I am aware that there is a missing statement here ----

25 THE CHAIRMAN: It is explained in para. 2 of the third witness statement. I have not seen that.

26 MR. TURNER: Yes. It was a further short statement correcting an error.

27 THE CHAIRMAN: I have not seen that, I do not think.

28 MR. TURNER: It may not have found its way into the bundle.

29 THE CHAIRMAN: But then we need to know whether the first witness statement has
30 incorporated now that correction.

31 MR. TURNER: I do not believe it has, madam.

32 THE CHAIRMAN: Perhaps we could all just mark on the first witness statement what the
33 correction is? (To the witness): Do you remember, Mr. James, what the correction was to

1 your first witness statement? A. It related to the age of meters -- sorry -- the productivity
2 of meter operators for Meter Fit, I believe.

3 Q Mr. Turner, perhaps you could help him?

4 MR. TURNER: Yes. This was an error regarding, as para. 2 of your third statement says in WS5,
5 Tab 19, the date of a meeting described in your first statement. (After a pause): Madam, I
6 am terribly sorry. For some reason, that statement is missing from all of the bundles in this
7 room. Unless anybody has a copy, we will just have to endeavour to collect that and come
8 back to this point.

9 THE CHAIRMAN: Mr. James, can you recall offhand which bit of your first witness statement
10 was corrected - which meeting that relates to? If not, then say so. A. No, I can't.

11 Q You cannot. Perhaps that can be cleared up in due course.

12 MR. TURNER: I am obliged, madam. Mr. James, if you will wait there, other counsel will have
13 questions for you.

14 Cross-examined by Miss CARSS-FRISK

15 Q Mr. James, looking at para. 14 of your first statement in WS1, at p.786, you refer there to
16 your recollection of something that you say David Thorn had told you about Ofgem's view
17 as to the ages at which meters ought to be replaced. That is what you are dealing with in
18 that paragraph, is it not? A. That's correct, yes.

19 Q Yes. Above that paragraph in the same statement you have quoted from some letters from
20 British Gas, provided to Ofgem, dealing with this topic - paras. 11, 12, and 13. Do you see
21 that? A. Yes, I do.

22 Q In particular, at para. 13 there is the reference to how British Gas has stated,

23 *“David James has misunderstood the nature of the relationship and the purpose*
24 *of the discussions between Ofgem and British Gas’ and maintains that British Gas*
25 *did not seek any formal or informal guidance from Ofgem on its approach to the*
26 *age of meters for removal. It goes on to state that, contrary to my understanding*
27 *in paragraph of my original statement, ‘David Thorn did not ask Ofgem to approve*
28 *specific ages at which meters could be replaced; nor did Ofgem suggest any*
29 *specific age limits. David James has misunderstood the position as represented to*
30 *him by David Thorn who conducted the discussions with Ofgem during this period*
31 *on this subject”*.

32 Now, in the light of that, you say in para. 14 that what you said in your original statement
33 represents your recollection. Just to be clear about what you had said there, would you go

1 please to p.797 of the same bundle where we have your original statement? Do you need to
2 just refresh yourself of that paragraph, or do you remember it? A. Paragraph 7, yes?

3 Q Yes. Now, in the light of what British Gas has said about the position very clearly - that
4 there was no specific guidance from them - from Ofgem to British Gas about ages for meter
5 replacement - are you prepared to accept that you may have simply misunderstood the
6 position? A. No. I'm not prepared to accept that. What happened at the time -- British
7 Gas was in dialogue with Ofgem on a regular basis regarding the meter operator contracts,
8 and at the outset of the meter operator contracts a twenty year threshold was established. It
9 was not a twenty year threshold that was created from the National Grid twenty year. It was
10 a twenty year that was, I believe, derived from British Gas in conjunction with discussions
11 or communication that it had had from Ofgem. So, British Gas established a first cut twenty
12 year threshold, and the discussions were between our regulatory team, I believe, and the
13 people in Ofgem who our British Gas regulatory team would have discussed these matters
14 with.

15 Q You had no communications about this yourself with Ofgem. A. That's correct.

16 Q Your understanding is based entirely on what you have been informed by David Thorn,
17 who led the regulatory team at British Gas; is that right? A. That is correct. That is
18 correct. I was advised by David Thorn on every occasion in relation to anything that
19 involved a regulatory matter.

20 Q Looking at what British Gas has communicated, as set out in your statement to Ofgem
21 subsequently -- It may be worth just turning up the letters which you have at pp.849 and
22 857. They are the letters that you quote from in your statement. Would you be prepared to
23 accept that what British Gas has said in those letters is likely to represent the accurate
24 position? A. "David James misunderstood the nature of the relationship". My
25 recollection of events over those years, in terms of when we changed the dates, various
26 dates, was that the British Gas regulatory team were in communication with Ofgem, not in
27 order to establish a particular date, but I think just testing the ground in terms of what sort of
28 dates would be appropriate perhaps for premature -- for which would be a premature meter, a
29 meter which was too young. I believe British Gas interpreted these discussions and
30 converted them into an age, a particular cut-off age. That's how I believe it operated.

31 THE CHAIRMAN: For what purpose would they have been discussing this threshold, do you
32 think? A. It was to try and maintain a control over the meter portfolio, the meters that
33 were available to CMOs. The original intention of British Gas was fairly clear, that it
34 wanted to be fairly aggressive in removing meters across the UK. It became apparent that

1 unless something was established like a line in the sand date then a lot of young meters
2 would be removed and, as a consequence of that, an age was set initially, which was 20
3 years, which was very much at the very outset of the CMO contracts. So any meters above
4 20 years of age could be removed by the first CMO, and the first CMO at the time was
5 Meter Fit.

6 MISS CARSS-FRISK: You said a moment ago that British Gas interpreted what Ofgem said and
7 converted it, as it were, into an age policy for meter replacement. That is really consistent
8 with what we have at the bottom of p.857, that David Thorn did not ask Ofgem to approve
9 specific ages at which meters could be replaced, nor did Ofgem suggest any specific age
10 limits. I am not asking you now to comment on whether you misunderstood anything or
11 not, but simply to confirm that I think we have reached common ground. You are saying
12 that British Gas interpreted Ofgem's views, converted it into specific ages for meter
13 replacement which fits with the information at the bottom of p.857? A. I believe that's
14 accurate.

15 Q There was a concern at the time, so far as you saw it, to replace, that it was better to replace
16 older meters rather than younger meters – that was the approach? A. As far as I was
17 concerned, until I'd been involved in the age threshold, I was operational manager within
18 the business employed to operate the meter operator contracts. There was a distinct tension
19 between the volume of work available to meter operators and this age cut-off, because the
20 density of work across the area at 20 years of age, it's like a triangle. At the top of the
21 triangle, the amount of meters within it are few and far between. I was obviously keen to
22 make the contracts work and the only way they could work was with an adequate supply of
23 meters to the meter operators so that they could operate efficiently. So 20 years in a very
24 short period of time from the commencement of meter operators was a threshold that was
25 far too high and consequently had to be reduced to enable the meter operators to have more
26 feed-stock of meters to go at.

27 Q So far as you were concerned, what was the reasoning behind selecting older meters first in
28 so far as possible? What was the point behind that? A. It was just a means of not
29 removing younger meters.

30 Q Why? A. Removing younger meters would be not an efficient way to operate the
31 contract, and it would be premature replacement.

32 Q Why is it not efficient to remove younger meters, as opposed to older ones? A. Well,
33 from a waste perspective it does not make sense to remove perfectly good meters which are
34 young. Then again, meters which are old can be perfectly good. Nevertheless, at the time it

1 was agreed that that was the only cut-off that was available to me, as the operating manager,
2 and it was the cut-off I applied to the contracts. We gave to Meter Fit, the first CMO, all
3 jobs above 20 years of age. It was a means to an end, as opposed to ---- There was no other
4 thinking at the time. It was just that ability to get the contracts off the ground and working.
5 In terms of young meter/old meter today, I know they can be as good as each other. At the
6 time, we were just trying to mobilise a very massive contract. It was the first of its kind in
7 the UK, and it was very complicated. We had an obligation as British Gas at the time to get
8 the meter operators working as quickly as possible.

9 Q Presumably it was perceived at the time that older meters were more prone to
10 inaccuracy/less valuable than younger ones? A. I don't think British Gas was particularly
11 concerned about meter assets. All it wanted to do was service its meter operators. Meter
12 assets were the concern of meter operators, and in terms of providing them with workload,
13 British Gas wanted to provide them with available amounts of meters, and we just cut a line
14 of 20 years.

15 Q Surely that was the underlying reason behind looking at older meters first rather than
16 younger ones? A. I think it was borne out of a tradition way back, many years before, for
17 the meter operator contracts. Twenty years has always been a line in the sand for an age of
18 a meter. I actually asked at one point in my career, where did it come from, and nobody
19 really knew. It was an appropriate age point. In terms of that, British Gas was not a meter
20 operator, it was a supplier, and it was employing meter operators to undertake a task, which
21 was to remove meters quickly. The intention of the mindset around the 20 years was just a
22 means of not taking out, as far as I was aware, younger meters, but drawing a line and just
23 taking out meters of 20 years plus. I followed that guidance and I didn't question it,
24 because I was just delivering a contract as best I could.

25 Q Looking at what happened in 2003, before the MSAs were entered into, do you agree that at
26 time you, at British Gas, in the national metering team were engaged in modelling how the
27 volumes that had been given to the CMOs, or might be given to the CMOs, would fit with
28 the glide path in the MSAs? A. We did. We did a lot of modelling and in terms of what
29 was available to the CMOs, because there was lots of work available to CMOs. There was
30 new building, new housing work, which was available to them without any linkage to the
31 MSA contracts. There was also the work as a consequence of customer driven activities
32 when they were called out. The other category of work was the so-called policy work of
33 British Gas. There were two distinct policy groups. "Policy", we called in British Gas then.
34 The other group ----

1 Q Mr. James, I am happy for you to elaborate, but in order to save time it would help if you
2 just focused on my question and just answered that, which I think you have done. As a
3 result of the modelling that you carried out is it right that it became clear that the volumes
4 that had been contracted, or it was envisaged would be given to the CMOs were actually
5 going to be in excess of what would be allowed under the glidepath allowance? A. From
6 what I recall it was a very tight line between the two and it depended upon as well the
7 customer numbers that British Gas had at the time, and at the time British Gas had 60-odd
8 per cent of the market, and at that time there was a broad balance, and it depended on
9 different areas of the country and in different areas slightly different portfolios available,
10 but it was broadly balanced. Some of the work could have been taken up in the 10 per cent
11 band in the MSAs.

12 Q You say it was broadly balanced and could have been taken up in that band. Can I refer you
13 to Mr. Steve Lewis's statement, which is in WS5 at tab 11, please, p.2477. Mr. Lewis, of
14 course, worked with you in the national metering team, did he not? A. That's correct.

15 Q I do not know if you have had a chance to see paragraph 25 before? A. Yes.

16 Q Or any part of his statement? A. I have yes, I have read it.

17 Q About six lines down from the top it says:

18 "During 2003, British Gas, wanted to identify the extent to which the CMO volumes were
19 likely to result in British Gas exceeding the level of replacements permitted under the
20 glidepath. As a result, various hypothetical modelling exercises were undertaken by British
21 Gas."

22 You of course have agreed that that sort of exercise took place? A. Yes.

23 Q Then at the bottom of that paragraph:

24 "From this modelling, it was clear that the contract volumes agreed with (or
25 proposed to) the CMOs were in excess of the meter replacement volumes
26 anticipated under the glidepath."

27 Now, that is right, is it not, that you actually came to identify that there was a mismatch?

28 A. Yes.

29 THE CHAIRMAN: When you refer to the "contract volumes", I think we have seen that there is
30 a minimum number, and then another number, and later in relation to one operator there
31 was a maximum number, I think, but at this time when you refer to "contract volumes
32 agreed with" or "proposed to", does that refer, do you think, to the minimum volumes ---
33 A. I don't know what Steve Lewis is referring to here, whether it is the minimum or the
34 mid-point because there is a mid-point minimum and a maximum in terms of the contracts, I

1 am not sure whether this refers to working the contracts at their bare minimums, or working
2 them at their nominal mid-point. But it is true to say that it was a tight balance between
3 what was in the MSA, by area and by each area it varied slightly; in London in particular
4 there were different characteristics as to what was installed in properties compared to
5 Manchester, for example, so it did vary across the country. But it is true to say at the time,
6 British Gas, it was a very tight dividing line.

7 Q Even between the minimum volume and the MSA glidepath? A. The minimums I cannot
8 remember, I am not sure whether it was the minimums or the midpoint to be honest.

9 MISS CARSS-FRISK: And, as a consequence of that concern, it is right, is it not that the chance
10 was taken to actually reduce the volumes that had originally been envisaged in relation to
11 CML/Siemens? A. CML had not been appointed at the time, so various amendments had
12 been made, plus there were other issues from the original invitation to tender with lots of
13 maximum and minimum figures were put together, but subsequently incorrect. So by this
14 time a lot of corrections had been made for various reasons and, in particular, one of the
15 biggest changes was the mix of job types. At the invitation to tender stage ----

16 THE CHAIRMAN: Mr. James, could you please focus on the question. Do you accept or not
17 that, amongst all the other things that you were still negotiating with CML, the opportunity
18 was taken, which is how I think Miss Carss-Frisk phrased the question, to reduce the
19 volumes in the contract, because of your understanding about the very tight line between
20 those volumes and the MSA glidepath? A. Yes, amendments were made right up to the
21 point the CML contract was signed.

22 MISS CARSS-FRISK: So far as UMS OnStream is concerned, if we go back to para.19 of your
23 original statement, please, on p.802 of WS1, you say in the second sentence there:

24 "I know that BGT were able to take account of the effects of the glidepath in
25 agreeing volumes with them. BGT did not tell OnStream what the glidepath was.
26 Gary Wignall was the negotiator for the MSAs and would report on any
27 negotiations to me and Neil Avery. We would discuss how the MSAs would fit in
28 with the CMO arrangements."

29 Now, you are not suggesting there, are you, that there was such a good fit between the MSA
30 and the OnStream contract that there was no need to revise volumes for the OnStream
31 contract? A. No, there were revisions to the numbers.

32 Q And again that was because of the mismatch between the volumes agreed and the MSA
33 glidepath allowance? A. And the various other factors that were arithmetic errors and
34 other things.

1 Q Mr. Lewis talks about the volumes with OnStream going down by 40 per cent, that is
2 para.41 of his statement in WS5, the last sentence of para.41, does that sound about right?

3 A. That was to whom?

4 Q That is OnStream? A. I believe that was about right, yes.

5 Q Then if you would go, please, to p.853 of WS1. Do you see there that is a note of a meeting
6 with British Gas on 14th August 07, it is between Ofgem and British Gas. Are you familiar
7 with this note? A. I have seen it once.

8 Q If we go to the penultimate paragraph:

9 “GW [Gary Wignall] explained that there are two reasons for BGT being within
10 the take or pay zone. The first reason is that the volumes in the CMO contracts
11 are now greater than the volume of meter removals permitted by the glidepath in
12 the Legacy MSAs. The second reason is that since BGT failed to replace
13 sufficient numbers of policy meters in the first two years ... This resulted in NG
14 replacing 100,000 of British Gas’s meters. This led to BGT exceeding the
15 glidepath since the CMOs continued to replace their contractual volumes.”

16 Then the penultimate sentence in that paragraph: “As a result, BGT has remained in take-or-
17 pay zone since February 2006”. Now would that fit with your understanding, I appreciate
18 that you left British Gas – when, exactly? A. 2005.

19 Q So far as you are aware and based on the knowledge that you had, you would not seek to
20 dispute in any way what is recorded there about the effect of the CMO volumes on British
21 Gas being in the take-or-pay zone? A. I couldn’t comment.

22 Q You could not comment. If you go then finally back to para.23 of your original statement,
23 please? That is p.803 of WS1, and over the page at 804, you say right at the end:

24 “The MSA agreements, when introduced, did limit the overall volume of work
25 available due to the size of the British Gas portfolio at the time, so far as I can
26 recall the volumes available to the CMOs by virtue of the MSA glidepath, together
27 with new installations, were sufficient to match the volume commitments in the
28 CMO contracts.”

29 Well, as I think you have accepted - in fact, you have accepted, there was this mis-match
30 between the glidepath and the CMO volumes which would suggest that that last sentence is
31 not quite accurate. A. I believed at the time, when I was involved with it, with Neil
32 Williams and Steve Lewis -- There were endless hours of re-calculating and re-aligning of
33 numbers. The numbers within the business were not accurate either. The volumes of
34 meters available were not accurate because we were deriving information from systems that

1 were producing various information that was correct one minute and not correct the next. I
2 believed at the time that the contracts could be in balance with the MSAs broadly speaking.
3 There were locations where that would be difficult, and there would be locations where it
4 would be easier in the country. But, I believed that at the time and it was ----

5 Q When you say 'at the time' you mean when exactly? A. At the time period that I
6 recollect back to. At the time I recollect that British Gas, so long as it maintained its
7 customer base -- that the numbers that were available at that time -- It was broadly
8 manageable and the two numbers would be -- We could operate the two sets of contracts.

9 Q But only after you had made the reduction in the Onstream contract and the revision in
10 relation to the projected CML contract. A. Any reductions made were all before contract
11 signatures with the participants. So, all the participants who finally signed these agreements
12 - in other words, Onstream, Capital Meters, and the second re-negotiation with Meter Fit --
13 All agreed that the numbers that they had available to them were as established at the point
14 at which we signed and agreed contracts.

15 Q Mr. James, that is right so far as CML is concerned insofar as that reduction prior to signing
16 that contract in December 2003. But, the Onstream contract was signed in 2002 and the
17 revision was made after that contract had been signed. Is that right? A. The re-
18 negotiation -- There was a re-negotiation with Onstream.

19 Q Yes. Exactly. A. As part of a re-negotiation with Onstream there was an amendment to
20 price.

21 Q And volume. A. Price and volume. So, commensurate with a reduction, as with all the
22 meter operators, whenever there was a reduction in volume, for whatever reason, whether it
23 was arithmetic error ... of work, or a re-modification of numbers, there was a re-calculation
24 of the rate.

25 Q Yes. But, I think you have agreed, or are prepared to accept, that so far as Onstream is
26 concerned, the agreed variation came after the contract had initially been signed in 2002.

27 A. Correct - after its original signature.

28 Q Yes. A. But then it was renegotiated.

29 Q Thank you, Mr. James.

30 THE CHAIRMAN: Just looking at that paragraph again, when you talk about sufficient to match
31 the volume commitments in the CMO contracts did you have in mind then the minimum
32 commitments? I think you referred to it as 'the nominal mid-point'. A. I think it was the
33 minimum to mid-point within that small area.

1 Q How were the volumes expressed then in the different contracts? There was a minimum
2 amount that you had to provide for them ---- A. Yes.

3 Q -- and then there was a mid-point expressed. How was that mid-point derived? Was that
4 what you expected it to involve? A. Well, British Gas could operate the contracts with
5 the CMOs within that tolerance and the CMOs also knew that they could, at any one point,
6 operate at the bare minimum and they could not challenge that because they contractually
7 signed on to it. Likewise, British Gas could move the contracts to operate at their
8 maximums. There was a maximum point, and beyond the maximum point there was also a
9 point to re-negotiate because there would be more money required by the CMOs because
10 they would have to draw down more money from their banking partners. So, there was a
11 sort of an operating band between 90 and 110 percent nominally (on one that I can
12 remember), and if you went below the 80 percent there was also an opportunity to increase
13 the rate. Likewise, if you went above 100 percent-odd there would be a re-negotiation of
14 some discussion, or termination, depending on how it went. But, all the meter operators
15 signed on to those terms.

16 Q There was that band of volume which was not necessarily the same in each of the contracts,
17 but that was how each of the contracts was structured. A. That's broadly how they
18 operate, yes.

19 Q Thank you. Mr. Vajda, do you have anything for Mr. James?

20 Cross-examined by Mr. Vajda

21 Q Mr. James, just remind me - you were employed during the relevant time by British Gas; is
22 that right? A. That's correct, yes.

23 Q You have been employed since November 2005 by National Grid; is that right? A. No.
24 Siemens.

25 Q Siemens. You are currently employed ---- A. One year at Siemens, and then, yes, 2006
26 with National Grid.

27 Q The statements that you have made - I have seen three statements in this case - were all
28 made when you were employed by National Grid. A. That's correct, yes.

29 Q But, in your statements and giving evidence, you are giving evidence with your British Gas
30 hat on or your National Grid hat on? A. I'm giving evidence on what I recollect at the
31 time. I put myself forward to National Grid to provide evidence because I was there at the
32 time and I felt it right to put the information that I had available to the Tribunal.

33 Q Yes. Mr. James, were you in the Tribunal yesterday when I was cross-examining Mr.
34 Avery? A. I was, yes.

1 Q So, you heard my questions. A. Only part.

2 Q Yes. Now, you will remember that I asked Mr. Avery a number of questions about
3 maintenance. Do you remember that? I am going to ask you some as well. Now, if we go
4 back to 2001, British Gas issued invitations to tender, did they not? A. Correct.

5 Q Do you agree with Mr. Avery that those tenders which were issued nationwide were on a
6 first visit fit principle? A. Yes, I believe they were. I did not actually put those tenders
7 out - it was Chris Drew that was the manager for those tenders.

8 Q Can you just explain to the Tribunal in your own words what you understand by the ‘first
9 visit fit’ principle? A. The first visit fit is any opportunity to change a meter. When you
10 can get across the threshold of a property you would naturally just change the meter.
11 Maintenance on credit meters does not happen. So, it would have been an opportunity every
12 time to change a meter.

13 Q The first visit principle applies to PPMs. A. It depends.

14 Q It applied particularly to PPMs; is that right? Pre-payment ---- A. Prepayment meters are
15 slightly different because you can maintain prepayment meters and maintenance generally
16 on a prepayment meter is a change of a battery. They last five to ten years.

17 Q It is important that we get your evidence on this. In relation to the first visit fit principle
18 you accept that it applies to DCMs. Is that your evidence? A. If you’re going to visit a
19 credit meter, you inevitably change it I think. That was the principle.

20 Q What about in relation to a prepayment meter? What is your understanding of how the first
21 visit fit principle applies to a PPM? A. The CMOs actually would change the meter if
22 they were to attend the property. In all cases I think they would change a prepayment meter
23 and put their own prepayment meter in.

24 Q The chairman is looking slightly puzzled. This is important evidence. Perhaps the best thing
25 to do ----

26 THE CHAIRMAN: Can I just see if I can clarify it in my own mind? In the tenders, as you
27 understood it, when they were explaining to the potential bidders what the work they were
28 going to do was, is it your recollection that the “first visit fit” principle was included in the
29 tenders for both DCMs and PPMs? A. I didn’t actually manage the tendering part of the
30 process, I managed the subsequent activities, but from what I recall the intention was then
31 that meters would be visited, or any opportunity to change a meter would take place. If a
32 customer made a request or whatever a meter would be exchanged. I think at the
33 prepayment stage the maintenance issue with National Grid had not been resolved. I think
34 it was the ambition of British Gas at the time that CMOs could actually maintain meters

1 which were not their own. Subsequently that didn't materialise. For the final contracts that
2 were agreed with all the CMOs that methodology didn't actually happen. It was an ideal in
3 the early days of the tender that CMOs would visit properties to exchange meters and also
4 possibly maintain other meters, but that was the ideal at the tender. Bearing in mind that the
5 actual final CMO contracts, when they were signed in some cases with Capital Meters it
6 was years later. That had changed to ----

7 MR. VAJDA: I think, Mr. James, it is important that you just answer the question – all right?

8 A. Yes.

9 Q Could I ask you to take up in the same bundle as your third witness statement, and the
10 Tribunal as well, WS5, flag 15, p.2721, this is ITT annex 1, invitation to tender. For the
11 Tribunal and the witness, the key paragraph that I want to focus on is (2) under
12 “Application of Charge Type”. Perhaps you could just read that quickly to yourself,

13 Mr. James? A. Can you just confirm the page, please?

14 Q Yes, 2721. A. And which paragraph?

15 Q It is just by the second hole punch. There are two sub-paragraphs numbered 2. It is the one
16 which begins “Upon the Company’s request”, the second of the two. A. Yes.

17 Q (After a pause) That accords with your understanding of the “first visit fit” principle?

18 A. Yes.

19 Q This, of course, is a British Gas document, is it not? A. It says so at the bottom, yes.

20 Q Then on maintenance, could I just ask you to go to p.2716. Perhaps you could read, and I
21 could ask the Tribunal to read, (b), “Maintenance”. (After a pause) So there what seems to
22 be happening in 2001 is that “details are awaited from Transco” – that is Grid, is it not?

23 A. At the time, yes.

24 Q “And tenderers”, that is the CMOs, is it not? A. That’s correct, yes.

25 Q “... are asked as part of their ... cover to consider maintenance of both their own
26 meters and Transco’s meters ...”

27 So the idea was, as you said, that at that stage CMOs would maintain not just their meters,
28 but also the Grid meters? A. And it does say again, “details are awaited from Transco”,
29 so I don’t think it was a firm commitment from anybody.

30 Q No, I am not suggesting it was a firm commitment, Mr. James. We then know that
31 following that tender British Gas got prices in from various CMOs, including Siemens. Can
32 you remember when you were first aware of the CML Siemens prices? I think it must have
33 been around the end of 2001. Would that accord with your memory or do you want me to

1 take you to a document? A. Prices would have come in as part of the tender return and
2 Chris Drew managed that process. I had not got involved at that point.

3 Q Let us just look at a letter I want to take you to, which is at 2295. I apologise, we have got
4 to go to the earlier witness bundle, witness bundle 4. A. I'm redacted.

5 Q Of course you are.

6 THE CHAIRMAN: This has a yellow box round it, Mr. Vajda.

7 MR. VAJDA: Yes, I had not appreciated that.

8 THE CHAIRMAN: In your version you have presumably got an empty page? A. It's redacted,
9 yes.

10 MR. VAJDA: I think the way I am going to put it to you is this: I put it to you that either you or
11 some of your colleagues at British Gas must have known what Siemens' prices were for
12 both DCMs and PPMs by the end of 2001? A. As a consequence of the ITT return?

13 Q Yes. It was Siemens response? A. We would have had those numbers, yes.

14 Q You would have had those numbers, thank you. If we go to 2002, you will recall that I put
15 to Mr. Avery yesterday, and I cannot remember whether it is in the confidential or non-
16 confidential section, but there were, and I think you must be aware of this, negotiations
17 between British Gas and Grid over maintenance unbundling. Were you aware that those
18 negotiations were going on? A. I was not party to them.

19 Q No, but were you aware of them? A. I was aware of things going on, but I was not
20 involved.

21 Q Of course, those negotiations had to be successful from British Gas's point of view for the
22 British Gas "vision" – you remember, that was the expression I used to Mr. Avery yesterday
23 – to be fulfilled, that is to say that you have CMOs to maintain all meters within the area.
24 For that to happen National Grid had to unbundle meter maintenance, did they not?

25 A. But by that time Meter Fit were already ----

26 Q Can you answer my question. A. No, I can't answer your question.

27 Q I will put it again. We can be here a long time, Mr. James. The question is this: for the
28 vision that was set up and the invitation to tender documents – and there were two aspects
29 to that vision, first of all, there was the "first visit fit" principle, which there is a faulty
30 meter and you go in and you replace it. A. Yes.

31 Q And I accept your point that it was an option, it was not, as it were, definitive. There was an
32 option that the CMO should maintain all meters, whether it was CMO meters or the
33 National Grid meters. The point I am putting to you is that for the "first visit fit" principle
34 to be carried through to fulfilment and for British Gas still to have the option to offer CMOs

1 maintenance on all meters, British Gas had to succeed in the negotiations with Grid to
2 unbundle maintenance, did they not? A. I didn't take part – I wasn't part of those
3 discussions.

4 Q It is not a difficult question. Are you unable to answer it, Mr. James? A. I am unable to
5 answer it, because I managed the CMO contracts which operated, and the first CMO
6 contract that went live was Meter Fit, and it operated without the maintenance issue being
7 part of that contract.

8 Q Mr. James, in 2002 are you telling us that you had absolutely no idea what was going on
9 between British Gas and National Grid in relation to maintenance unbundling? A. It
10 wasn't my responsibility, and I was not party to those discussions. It was not my remit.

11 Q But was your remit to negotiate the contracts with CML? A. No – oh, with CML, that's
12 correct, yes, it was later down the line.

13 Q When did your remit for negotiating contracts with CML start? A. The final contract to
14 be negotiated ----

15 Q I am looking for a date? A. 2003, 2004.

16 Q Well the contracts with Siemens had already been ---- A. They had already been
17 tentatively accepted subject to negotiation.

18 Q When was your first involvement with the CML contracts, the negotiations? When was the
19 first time that somebody from my client, that is to say either CML or Siemens would have
20 seen you on the other side, British Gas, what date? A. Chris Drew received the
21 invitation to tender responses from Siemens. Then the process that thereafter was that
22 Meter Fit was the first meter operator to be negotiated, that took several months. Then the
23 next operator to be negotiated was OnStream ----

24 Q Mr. James, you are not answering my question.

25 THE CHAIRMAN: The question is, in your witness statement you say that between 1999 and
26 2005 you were specifically responsible for the negotiations for and operations of CMO
27 contracts. Now, what Mr. Vajda is putting to you is, that in order to negotiate those
28 contracts you would have to know whether British Gas had been successful in persuading
29 National Grid to unbundle maintenance so that you could know whether in your
30 negotiations with the CMOs you ought to be including provision for them to provide
31 maintenance on National Grid meters, otherwise you would not know what to put in the
32 contract about whether the CMOs should be maintaining National Grid meters. Do you
33 understand that far? A. Yes, I do.

1 Q So there is a question here as to how much you knew in order to be able to do your job of
2 working out what you needed to negotiate with the CMOs as to the state of the negotiations
3 with National Grid about unbundling maintenance on their meters. Is that the point, Mr.
4 Vajda?

5 MR. VAJDA: Yes, you see, I find it somewhat surprising, because if you go to your own
6 statement, Mr. James, at para.7, this is your third witness statement, at 2889. Just read to
7 yourself para.7 of that statement? A. (After a pause) Yes.

8 Q Now I took it from that, as this is in your witness evidence, that you knew when National
9 Grid had informed British Gas about its position on maintenance, that this was something
10 that was going on at the same time as you were negotiating – your evidence that you have
11 given in the last five or ten minutes is completely different from that, which is right – what
12 you say at para.7 or what you have just told us? A. I knew that British Gas in June 2002
13 had been informed that National Grid was not going to allow anybody to maintain its
14 meters.

15 Q So you now accept that you personally knew back in June 2002, is that right? A. I was
16 aware but I did not negotiate ---

17 Q No, I am talking about your knowledge. So you now accept that you knew that that was the
18 position in June 2002? A. I was aware of it, yes.

19 Q Thank you. Now, we then have a further letter, actually it is the same letter, and I am going
20 to have the same difficulty because it is confidential, but perhaps I can try and get around it
21 by asking you this: Will you accept from me that you received revised prices from
22 CML/Siemens in October 2002? Can you recall that? A. No, I can't recall that
23 specifically.

24 Q Well perhaps I can put it another way, did you in July 2002 inform Siemens that
25 maintenance was off the table? A. I don't recall that.

26 Q Will you accept from me that Siemens made a revised price proposal to British Gas, I
27 accept not to you personally, in October 2002 which included maintaining all the meters
28 and was still based on the first visit fit principle? A. I don't recollect that.

29 Q Well perhaps what we can do is we can go to an email in witness bundle 5, I am just
30 jumping forward a little bit in time, at 2745. Do you have that? A. Yes.

31 Q This is an email from Steve Lewis to Duncan Southgate at CML/Siemens and you see it is
32 copied to a number of people. Could I just direct your attention ----

33 THE CHAIRMAN: What is the document that you are looking at, Mr. Vajda?

1 MR. VAJDA: 2754. I apologise. There should be a lot of blank paper and then
2 ["steve.lewis@centrica.co.uk"](mailto:steve.lewis@centrica.co.uk).
3 THE CHAIRMAN: Yes.
4 MR. VAJDA: Can you just remind me, Mr. Lewis, was he reporting to you at this stage?
5 A. No.
6 Q What was the relationship between you and Mr. Lewis? A. Sorry, what is the date of
7 this.
8 Q Well first of all, in fairness to you, Mr. James, have you got the beginning of the mail?
9 A. 2754 the email header?
10 Q Yes, now that is an email from Steve Lewis, which is sent to Duncan Southgate and you
11 will see it is sent on 20th January 2003? A. Yes.
12 Q Now, my question was what, at that stage, was the relationship between you and Steve
13 Lewis? Was Steve Lewis your superior, were you his superior, how did it work? A. I
14 don't recall the email.
15 Q No, the question I am asking ---- A. 2003 Steve Lewis was reporting to me at that time, I
16 think.
17 Q Right so he was below you in your team, is that an accurate ---- A. He was commercial
18 manager on the team, yes.
19 Q And would he have sent out an email without getting your say so? Would he have sent out
20 something which was contrary to what he knew you were intending? A. I don't know.
21 I'm not included on this email.
22 Q Well then can we just go to 2758 or perhaps we should just go to 2756 to put it in context,
23 and in fact if you could read to yourself the first paragraph? (Pause whilst read): Then if I
24 could ask you to read, again to yourself, para. 16 on 2758? (Pause whilst read): Do you
25 see that Mr. Lewis is saying in January 2003 to Mr. Southgate, "No fault found". The
26 principle is that if you attend on a non-meter operator meter that must be referring to a Grid
27 meter, must it not? A. It must be, yes.
28 Q You would replace the existing meter with one of your own. So, is that still the first visit fit
29 principle? A. Yes.
30 Q Yes. Do you know why it was that you were still asking Siemens at the beginning of 2003
31 to quote on this principle when you knew, according to your evidence, or you were told,
32 that National Grid had closed maintenance off in June 2002? A. (After a pause): I
33 don't recall, no. I don't recall why that was the case. (After a pause): I wanted to say
34 earlier on that by about this time - 2003 - it was already the case that first visit meant that

1 meter operators would attend sites determined by British Gas whether they were policy or
2 customer driven, and it was well-known at that point that the methodology was going to be
3 that meters would be exchanged - there would not be any maintenance.

4 Q We are looking at the documents. A. Yes. Maintenance only on their own meters, but
5 not on National Grid meters. They could maintain their own meters.

6 Q I still would like an answer to this question: Why do you think that your team - and, as I
7 understand it, you were leading the negotiation from CML, were you not? A. Yes.

8 Q Why were you, in January 2003, still asking Siemens for a quotation on this basis if you
9 thought that the maintenance issue had been closed off? A. Well, they still have to
10 maintain their own meters. So, they would still maintain a prepayment meter ----

11 Q Here the words are, "If you attend on a non-MO meter ----" Do you see? It says,

12 "The principle is that if you attend on a non-MO meter you would replace the
13 existing meter with one of your own".

14 A. Yes. So, that's the action that they would be undertaking. Steve is saying here, "If you
15 attend a non-MO meter -- if you attend a National Grid meter you will replace the existing
16 meter with your own". That doesn't say there's maintenance That says you just replace the
17 meter.

18 Q What do the words, "No fault found" mean? A. Well, if it's one of your own meters ----

19 Q Does 'No fault found' mean responding to a maintenance call, or not? A. Well, 'No fault
20 found' -- It doesn't matter because if you're through the door you'll change the meter.

21 Q Can you just answer this question: "No fault found" -- That is presumably as a result of
22 somebody ringing up, saying that there is a problem with the meter; is that right? A.
23 (After a pause): No, I don't think it's that.

24 Q What is it? What does, "No fault found" then mean? A. Well, if it is one of your own
25 meters with 'no fault found', you would be paid. So, in other words ----

26 Q But ---- A. If I can explain? If British Gas sent out a meter operator it would do it for
27 two purposes: it would send it out to replace an existing National Grid meter like with like,
28 or an appropriate exchange. However, if British Gas then sent out a meter operator to one of
29 its own meters - i.e. a meter operator meter - then with a 'no fault found' it says you will be
30 paid. So, what it's saying is that if British Gas sends out a meter operator on a wild goose
31 chase to a particular job and it's cost them £50/£60 to get there, and there was no fault
32 found at the meter, you will get paid for it. That's all that relates to.

33 THE CHAIRMAN: Is it envisaged that the meter would have been replaced if it was the CMOs'
34 own meter, or would they not replace it? A. Well, they were doing two actions. If they'd

1 gone there and it had been a National Grid meter, they would have liked to have changed it.
2 If they'd gone there and it was their own meter and it was working fine, but British Gas had
3 sent them there, British Gas have to pay up to them and say, "We owe you money for that
4 because we have sent you on a 'no fault found' visit". So, consequently, they would get
5 reimbursed and that would be the end of that particular transaction. But, it doesn't relate to
6 the question you're asking me.

7 MR. VAJDA: I am not sure I can take it much further with this document. You were leading
8 these negotiations with CML. Here we are in January 2003. You must have been aware
9 that you had requested and revised prices had come in from CML at the end of 2002. A.
10 Yes. I recall four price adjustments to the CML Siemens' volumes overall - four major
11 ones and lots of minor ones.

12 Q The first lot of Siemens' prices you got were at the end of 2001, were they not? A. That
13 would've been through Chris Drew and involving the tender.

14 Q Can you recollect whether the Siemens' prices that you got at the end of 2002 were higher
15 or lower than the prices you got in 2001? A. I can't remember that, no.

16 Q Can you tell us when you were first aware of the prices of National Grid PPMs? A.
17 (After a pause): Steve Lewis did some evaluations when he was working for me, and we
18 both agreed that there was no point in giving ----

19 Q I am sorry. Could you answer my question? A. It would've been when Steve Lewis was
20 working for me in around about 2002/2003. I can't remember the exact time.

21 Q I just want to get your evidence correct on this -- to give you the opportunity of giving it.
22 When was the first time you, Mr. James - and then, there is a rider to that, your team, which
23 is not just you, but the Chris Drew of the world - would have been aware of National Grid's
24 PPM prices? A. I can't remember the exact date, but I recall Steve Lewis telling me, but
25 I can't remember the exact date.

26 Q This is in relation to your personal knowledge. A. Correct.

27 Q Would you accept that people in your team - perhaps the finance people - must have known
28 about the National Grid PPM prices for quite some time because, after all, you were renting
29 meters from National Grid, were you not? A. Yes. People would've known. That's
30 correct.

31 Q Would have known, yes. If we then go forward in time - not by very much --- Have you
32 still got WS5 in front of you? A. Yes.

33 Q If we then go to p.2782, perhaps you could just read again to yourself - and I could ask the
34 Tribunal to read - the e-mail from Steve Lewis to Duncan Southgate -- (Pause whilst read):

1 Do you see the reasons that Mr. Lewis gives for the revised volume forecast? You see what
2 he says in relation to Transco in the second paragraph? A. Yes.

3 Q That is, of course, the reason -- or, the reasons why you were no longer able to offer
4 CML/Siemens the BG vision that you had set out in the ITT. A. There was a cost benefit
5 of not giving that work to CMOs. That's correct and British Gas made that decision.

6 Q What was that cost benefit? A. It was a difference in rental, about £3 or £4 per annum.

7 Q Is it because so far as National Grid was concerned, they had bundled the price of
8 maintenance with the price of the meter, so you had to pay for the maintenance whether you
9 liked it or not? A. You paid for the maintenance and the rental in one payment, that's
10 right.

11 Q It was a package, was it not? A. Correct.

12 Q It turned out to be a non-negotiable package, did it not? A. Well, it turned out from the
13 instructions ----

14 Q From ---- A. From the instructions we were given, we ----

15 Q Also as between Grid and British Gas, you had reached the end of the road with Grid on
16 that, had you not? A. It would seem so.

17 Q Can we then just move quickly to your witness evidence on this. This is, happily, in the
18 same bundle and this is at flag 19. Could I ask you to go to 2889 ----

19 THE CHAIRMAN: I am just a little concerned, Mr. Vajda, that we are getting away rather from
20 the relevance of maintenance bundling in this case. We did have a CMC as a result of
21 which it was clear that a wider case that maintenance bundling has a foreclosing effect
22 absent the MSA glide path is not part of this appeal, because it was not ----

23 MR. VAJDA: These questions are not part of that. The point, madam, that you ruled
24 inadmissible was effectively the economies of scale on maintenance, but the one bit that is
25 in the Decision is that by bundling maintenance that closed off the avenue to the CMOs for
26 replacement meters. That is very much part of the Ofgem Decision. In my respectful
27 submission, these questions go to that point. It is important to bear in mind that
28 maintenance is part, in that sense, of the Decision. (To the witness) Can I just ask you,
29 Mr. James, to read to yourself para.8(a). (After a pause) That could not have been the real
30 reason, could it, Mr. James, because you or your colleagues in British Gas must have known
31 since, at the latest, November 2001 when you got the Siemens prices that Grid's prices were
32 cheaper, yet you still continued negotiating with Siemens until the spring of 2003, did you
33 not? A. We were negotiating with Siemens, yes.

1 Q So this could not be the reason that you excluded maintenance work from Siemens, could
2 it? A. When I was negotiating with Siemens, Siemens/CML, the issue of maintenance
3 had been resolved. As far as I was concerned it wasn't part of the negotiations and it wasn't
4 part of my discussions. Meters would be visited and exchanged by CML, and they would
5 maintain their own meters. That's the only maintenance they would do.

6 Q Fair enough, Mr. James. Let us go over the page to 2890. You give a second reason, and I
7 think what you are saying is that these are your own personal reasons – is that what you are
8 saying here? Just read that to yourself? A. Yes.

9 Q You do not exhibit any British Gas document to support that assertion, do you? A. The
10 assertion in (b)?

11 Q Yes. A. I don't know. That's how I recall it at the time.

12 Q And you did not – it was what? A. That's how I recall it at the time. It was a ----

13 Q Is that how you recalled it at the time or how you recalled it when you wrote this statement?
14 A. That's what I recalled when I wrote the statement, yes.

15 Q This statement was written when? It was written in July 2008 when you had had two
16 statements which you had already made in this case. How is it that you recalled it in July
17 2008 and did not in your two earlier statements? A. I think I was referring – it was a
18 reference back to Steve Lewis's statement.

19 Q I see, you are saying it is in response? A. I was responding to Steve Lewis, yes.

20 Q Just examining (b), and just looking at the last sentence:
21 “This is because CMOs levy transactional charges in relation to certain types of
22 maintenance activity, whereas National Grid does not.”

23 Of course, National Grid bundles the rental with the maintenance, does it not? A. That's
24 correct.

25 Q Thank you. You mentioned in answer to some questions from Miss Carss-Frisk that it was
26 a “tight fit”, I think is the way you put it, between the MSAs and the CMOs, and I think you
27 used the word “imbalance” as well. Can I just explore for a moment how that works in
28 relation to PPMs. Would you accept from me that in 2005 National Grid carried out – this
29 is in relation to PPMs – 600,000 maintenance visits at 360,000 addresses. That is actually
30 in National Grid's notice of appeal. I hope you will accept those figures. Would you
31 accept, had a CMO carried out those visits, that under the “first visit fit” principle it would
32 have replaced a meter on the first visit to 360,000 premises? That is how the “first visit fit”
33 principle works, does it not? A. If British Gas wanted that, that's correct. British Gas
34 would not have wanted that because British Gas's costs would have increased.

1 Q I am just trying to explore with you how the British Gas vision in the invitation to tender
2 would work, and that is the “first visit fit” principle. As I understand it, the Legacy stock of
3 PPMs in 2004 was 1.9 million. It would have reduced by 14 per cent in 2005, which by my
4 arithmetic takes it down to 1.634 million. 360,000 as a percentage of that ----

5 THE CHAIRMAN: What is the 14 per cent?

6 MR. VAJDA: It is the glide path, because on the PPMs we have a seven year glide path, so it is a
7 14 per cent reduction each year, as opposed to 5.5 on the DCM. If you take 360,000 as a
8 percentage of 1.63 million, that is 22 per cent. How much does the Legacy glide path allow
9 you to replace free of charge on PPMs? It is 7 per cent, is it not? A. I don’t know.

10 Q You do not know – 14 per cent. What I am putting to you, Mr. James, and if you do not
11 agree with it say so, is that your vision that was set out by your company, which is the “first
12 visit fit” principle, if applied across the board in 2005, exchange in 360,000 premises,
13 would have been completely incompatible with the glide path, would it not, because you
14 would have exceeded the glide path by a considerable number of PPMs, because a glide
15 path allows you a 14 per cent replacement, and on the first year you would have replaced 22
16 per cent, which would have been well over the glide path. There would not have been tight
17 fit, there would have been a complete mismatch.? A. But British Gas did not want to use
18 the CMO ----

19 Q No, I am not ---- A. I am sorry, I don’t understand the question, I am sorry.

20 Q Okay, fair enough. Certainly that was the vision that Mr. Avery gave us yesterday that that
21 was what the ITT was all about, was it not? A. The ITT was all about one thing, what
22 materialised thereafter is something different.

23 Q Fair enough. As I said, madam, I am not seeking to revive any case that has been struck out
24 but it is important, this is on maintenance as a route to the replacement meters. In the light
25 of your observations and Mr. Turner’s in relation to the volume reduction I have cut right
26 back, but with your permission I would just like to ask Mr. James one or two questions on
27 other factors. I am conscious of the fact that I made my submission in opening that we are
28 not asking the Tribunal in a sense to make a finding in relation to all the facts, but obviously
29 what is important is the importance of the relative factors, and there are one or two points
30 that just need to be explored with Mr. James, and it is in this same witness statement, Mr.
31 James. If you go to para. 30. The reason I want to explore this with you in particular is
32 because you gave this as an answer to Miss Carss-Frisk as well.

1 Just to put it in context, as I understand your evidence at 29, you are saying that, yes, you
2 accept that the MSA was a factor but there were other equally important factors, that is your
3 evidence, is it not? A. Yes.

4 Q The first other factor that you refer to, and obviously this is a factor that you consider to be
5 important because you gave it in answer to Miss Carss-Frisk, is changes in customer
6 numbers? A. Correct, yes .

7 Q Perhaps the best way of doing it is to go to your own company figures ----

8 THE CHAIRMAN: This is going to take a long time.

9 MR. VAJDA: No, it is not going to take a long time; it is not going to take a long time. There are
10 two ways of doing this and I am very happy to do either. I can sit down now, and we can
11 make this simply by way of submissions in my closing submissions, but I do not want it to
12 be said that it was not put to Mr. James.

13 THE CHAIRMAN: Well why do you not put the proposition to him and let us see where we get
14 to without necessarily going to all the supporting documents first?

15 MR. VAJDA: I was just going to look at one document which I hope may be of some interest to
16 the Tribunal – I may be disappointed in that (Laughter). It is a gas meter document, perhaps
17 not the most exciting document in the world, but there we are – we are all trying to liven up
18 this case! (Laughter) It is at 2293 – this is at WS4. This was also a document which was
19 annexed, as I understand it, to the ITT, and these are indicative of British Gas meter
20 population, is that right? A. Yes, it looks like it.

21 Q If we just take area 5, which is the CML/Siemens' area, the volume, the numbers, that looks
22 like it is just over 2 million DCMs, is that right? A. Gas credits, 2170, yes.

23 Q I will do this now without going to the documents. The tender that Siemens put in for that
24 area was 771,000 DCMs, and that was effectively in response to the – so that is much, much
25 lower than the number here. Have you got any idea what percentage fall there was between
26 the time of this tender and the time that you signed the Siemens' contract? A. No, I know
27 the number has dropped, but I do not know to what extent.

28 THE CHAIRMAN: That 2170, is that the total meter population? A. Yes, that's correct.

29 MR. VAJDA: In area 5.

30 THE CHAIRMAN: In area 5, and the other figure, the tender ----

31 MR. VAJDA: The tender document is at – I will just give the reference.

32 THE CHAIRMAN: Just give the number.

33 MR. VAJDA: The number is 771,463. The number was then reduced, and I will just give the
34 numbers, to ----

1 THE CHAIRMAN: That 771 is per year is it, or is that ----

2 MR. VAJDA: No, that is over the five year contract. That number was reduced by 17 per cent to

3 637,967, that is a 17 per cent reduction.

4 THE CHAIRMAN: Reduced by the time the contract was signed?

5 MR. VAJDA: Yes, and for the Tribunal's reference we went through that yesterday. I think they

6 are probably in some document, but the first figure is at WS5 at 2728, and the second figure

7 is at – I have lost the reference, I will give it later.

8 The point I am trying to make, rather laboriously, Mr. James, is that yes, you might have

9 suffered a small number of reductions in customer numbers, but that cannot explain the 17

10 per cent reduction in DCM volumes, can it? A. No, that was one of the reasons.

11 Q But it cannot explain it, can it? A. The customer number drop was part of the reduction.

12 Q I have not seen any contemporaneous evidence that shows that the number that the

13 reduction in British Gas's customer base led to the 17 per cent reduction in Siemens'

14 volumes for DCMs. I think you said in answer to a question that Miss Carss-Frisk posed,

15 that do not forget that you also have new installations, and do you recall that you asked

16 Siemens to tender for new installations, so the figure that I have given you actually includes

17 new houses. It does not just include existing customers, it also includes new. Do you

18 understand that point, Mr. James? A. Can you explain the new houses in relation to these

19 numbers?

20 Q Yes, you said in answer to a question that was put by Miss Carss-Frisk, "Don't forget that

21 CMOs also have the opportunity of putting in meters in new installations"? A. Correct,

22 yes.

23 Q Well the point I am putting to you is that the figure, 771,463 included new installations, it

24 was not just for existing installations, and you must have been aware of that; that was part

25 of what you asked Siemens ---- A. Total installation volume.

26 Q Existing and future, was it not? A. I can't remember; I can't remember the numbers.

27 Q You cannot remember? A. No.

28 THE CHAIRMAN: But the tenders generally were for all the meter installation, whether they

29 were new build ---- A. It was for all the work in the area, yes.

30 MR. VAJDA: Which includes new work? A. Yes.

31 Q You accept that in relation to DCMs Siemens was cheaper than National Grid? A. Yes.

32 Q So why would British Gas want to reduce the volume of cheaper meters other than because

33 it would be paying charges under the MSAs? A. Well there were lots of reasons. The

34 MSA is one, and the other reasons were that we wanted to slow down the meter operators

1 anyway, at the time there were issues around safety, and the fact that within the UK they
2 were running out of employees to actually undertake the work, because as soon as ----

3 Q Just hold it there. Safety, that is something you have not even mentioned, you have just
4 thought of this ---- A. No, I am just trying to indicate there were lots of reasons, access
5 rates, poor access rates, things like that.

6 Q Simply in terms of commercial bottom line reasons, British Gas, their shareholders and
7 shareholder value, it is obviously important to obtain savings, why would British Gas turn
8 away the savings that were offered by 771,000 Siemens' meters why would they do that,
9 but for the MSAs? What other reason would they have to turn away those savings? A.
10 I've mentioned in my witness statement that British Gas was getting concerned, and they
11 wanted to reduce the volume of work given to CMOs because retention within the business
12 was becoming a problem. There were problems cropping up with regards to issues with
13 customers. I had a discussion with a retention manager and we said, "We don't want to get
14 ourselves on the news. We don't want to get ourselves into disrepute by, you know,
15 working the meter operators too fast". I think, at the end of the day, there were a
16 combination of reasons - plus, as I've mentioned at the very outset -- If I can just explain,
17 CMOs and British Gas -- This was the very first relationship in a very different
18 environment. British Gas then let contracts. Nobody knew how they were going to pan out.
19 Nobody knew how they were going to work. So, there were lots of lessons learnt. The
20 original ideal as to what we wanted to do versus what ultimately we signed contracts with
21 the CMOs was slightly different. Certain things were removed and adjusted to take account
22 of that - access rates, completion rates. All sorts of things become obvious one or two years
23 down the line compared to pre-ITT when numbers were just written down. Perhaps, at that
24 time people thought they could be done, but in reality that wasn't the case.

25 Q I think there is no point in exploring this further with the witness. We will make our
26 submissions on the documents. Thank you very much, Mr. James.

27 Cross-examined by Mr. RANDOLPH

28 Q Good afternoon, Mr. James. If you can take up Bundle WS1, please, and go to what I am
29 going to call for the purpose of this cross-examination your July 2007 witness statement,
30 which is the witness statement you gave for the purpose of the administrative proceedings?
31 If you can turn to p.796 of the bundle, you can see it is the witness statement I have just
32 referred to. A. Yes.

33 Q This is the witness statement you gave for the purpose of the administrative proceedings?
34 A. Yes.

1 Q At para. 5 you say that between 1999 and 2005 you were the national metering manager and
2 in that role you were specifically responsible for the negotiations for, and operations of, the
3 CMO contracts, and also the operation of the MSA contracts. Yes? A. The CMO
4 contract I negotiated was the CML.

5 Q That is what I was going to come to because this was a general statement you made there.
6 But, as we have seen, I think, from Mr. Avery, just to make good the point -- Mr. Avery's
7 witness statement at WS1, p.607 -- At the bottom of the page there, you led the commercial
8 negotiation for CML, but Mr. Avery led the re-negotiation of the Meter Fit contract with
9 support from David Clark and David James. So, is it right that you were not involved in the
10 original negotiation for Meter Fit - or certainly not as a lead partner? A. No. I was the
11 business owner, as we called it. In other words, I would ultimately take on the contract once
12 it was handed to me.

13 Q Exactly. A. So, I would be fed the information.

14 Q Exactly. You would be handed the finished product, but you were not involved in the
15 negotiation. A. I participated, but I was not the negotiator, no.

16 Q No, you were not the negotiator. Thank you. We will come back to this administrative
17 proceedings witness statement, but turning to the first witness statement in these
18 proceedings, if we could turn back to p.786 in the same bundle -- (After a pause): At
19 para. 14 you accept that you were not personally involved in the discussions with Ofgem.
20 A. That's correct.

21 Q I think Miss Carss-Frisk has explored that a little bit. So, you were not involved personally
22 in any discussions with Ofgem relating to any of the CMOs; is that correct? A. That's
23 correct.

24 Q Thank you. In fact, it is fair to say - it is not only fair, but it is correct to say - that your
25 previous employer of some twenty-seven years has strongly contested your evidence in
26 certain key respects, has it not? That is why you put in a third witness statement dealing
27 with that. So, there is a debate, to put it neutrally, between your recollection and British
28 Gas. A. That's correct.

29 Q Yes. Thank you. Moving further on in the same witness statement, if you could move to
30 p.789, Section D, this deals in two short paragraphs with United Utilities Meter Fit. Do you
31 have that? A. I do, yes.

32 Q You say there at para. 29, in the third line, effectively that you have been discussing jobs.
33 Do tell me if this is an unfair summary of what you are saying, but effectively at paras. 28

1 and 29 effectively you are correcting what you previously said in your first administrative
2 witness statement. A. That's correct.

3 Q You thought that Meter Fit had tendered on the basis of fourteen jobs a day. You admit
4 now that actually it was eleven but that -- and then you point to a note that we will come to
5 in a moment -- that actually they, Meter Fit, were only completing seven. Is that right/ A.
6 Yes. I made an error, yes.

7 Q Yes. You made an error. That is human, as we all know. You then go on at para. 29 to say
8 that this - and I am not quite sure what 'this' refers to - suggests that the right figure for
9 what you assumed in their business model could have been eleven jobs a day, and not the
10 fourteen jobs a day, although my recollection is that it was fourteen. So, you have admitted
11 that it is an error.

12 "It does support my previous recollection that UU were not able to operate
13 efficiently."

14 Now, I just wanted to explore a little bit with you what you meant by your 'previous
15 recollection' because it does not seem to be referred to anywhere else in the witness
16 statement.. A. I don't know.

17 Q You do not know. Okay. We will just leave it as an, "I don't know". But, I think you would
18 agree - and if you do not, that will be interesting - that there were difficulties, teething
19 difficulties, at the start of the Meter Fit contract that impacted on British Gas as well as
20 Meter Fit. I say that I would be surprised if you do not agree with that because that is what
21 you say in your witness statement at para. 16 of your administrative proceedings - your July
22 2007 witness statement. Just to give you the reference, that is p.801, moving forward. I
23 will just let you read that paragraph 16 to yourself. (Pause whilst read):

24 "I am aware from my discussions with UU's representatives that UU's poor
25 performance can also be attributed to other problems, which ultimately brought
26 the contract near to collapse. The quality of data provided to UU by BGT was the
27 source of some problems".

28 A. Yes, that's correct.

29 Q So, it is both ends. A. Correct.

30 Q There were problems BG's end and there were problems at Meter Fit's end. A. That is
31 correct. After that there was a re-negotiation.

32 Q Indeed. There was indeed. We are going to come to that in a moment. Now, just turning
33 back in the same witness statement to para. 11, you say in that paragraph, "UU was BGT's
34 first choice of CMO". We know that Chris Drew was BGT's project manager for this

1 contract. So, does that mean that he was the person negotiating that contract? A. He led
2 the negotiation.

3 Q He led the negotiations. We do not have any evidence from Mr. Drew.

4 “-- I was also party to the negotiations as ultimately I was to run the contract.

5 During the tender process, I recall that UU provided an attractive bid which was
6 relatively low cost, and they were keen to commence the contract quickly”.

7 So, you recall that UU provided an attractive bid. That was a bid for the ITT? A. That’s
8 correct, yes.

9 Q So the bid was attractively priced on the basis of the ITT, but we know, do we not,
10 Mr. James, that the position changed between ITT and signature of our original agreement
11 in so far as volumes were concerned? A. Chris Drew would have dealt with that. I don’t
12 remember any specific changes to volumes.

13 Q So despite the fact that you can recall that UU provided an attractive bid, you cannot recall
14 what happened thereafter, despite the fact that you were actually going to run the
15 agreement? A. I recall the bid as being very low cost. That’s what I recalled, so that’s
16 something that stuck in my mind, yes.

17 Q Yes, I am sure.

18 THE CHAIRMAN: Are you talking, Mr. Randolph, about a change in volume between the tender
19 period and the first signature?

20 MR. RANDOLPH: Yes.

21 THE CHAIRMAN: The signature of the first agreement?

22 MR. RANDOLPH: Yes, absolutely. That is exactly the period I am talking about, the difference
23 between the ITT and when the agreement was signed in 2002. (To the witness) At para.13
24 we can see, over the page, p.800:

25 “BGT adoption of Ofgem’s guidance ...”

26 I am not going to make any comments on that –

27 “... restricted UU’s volumes and worsened their density of operations and thus
28 created real operational difficulties.”

29 We can see there that the volumes were restricted, and indeed the same point is made at the
30 first sentence of para.13 on the previous page. Again, I make no comment about adoption
31 of Ofgem’s guidance, that has been dealt with by Miss Carss-Frisk:

32 “... has led to a great reduction in the geographic density of meters that BGT could
33 issue to CMOs compared to what was set out in the original invitation to Tender
34 for the contracts.”

1 So there we have the difference between the volumes in the ITT which you agree that my
2 client's bid was attractively priced based on the data in ITT, which must have included the
3 volumes, and then we see your acceptance of the position in your evidence that those
4 volumes changed between ITT and completion of the contract. By "completion" I mean
5 legally, the contract was concluded. Do you accept that? A. What this is trying to say in
6 para.13 is the volumes that UU are able to fit – meters they were able to fit got worse,
7 because of the age of meters that they were allowed to actually go out to site to visit was 20
8 years plus, and they were so few and far between and spread so thinly across the north-west
9 and north-east that they actually could not fit enough meters to fulfil the contract. That is
10 what that relates to.

11 Q Fine, but para.13, that is not what your evidence says. Paragraph 13, line 2 says, because of
12 what you say was the adoption of Ofgem's guidance:

13 "... led to a great reduction in the geographic density of meters that BGT could
14 issue ..."

15 Nothing to do with what Meter Fit could do, it is what BGT could do.

16 THE CHAIRMAN: To be fair to the witness, Mr. Randolph, at the beginning of para.12 it says:

17 "After the UU contract negotiations concluded and the operations commenced ..."

18 MR. RANDOLPH: Absolutely.

19 THE CHAIRMAN: I think what Mr. James is saying is that this density problem and the age
20 problem arose once they were already operating the contract concluded, whereas I
21 understood your question as trying to get to why there was a reduction in volume between
22 the tender and the contract conclusion.

23 MR. RANDOLPH: If need be, madam, we can probably deal with this in submissions, because in
24 Grid's supplementary submissions there is data showing differences between ITT volumes
25 and contractual volumes.

26 THE CHAIRMAN: Yes, and what you were suggesting to Mr. James was the reason for that
27 reduction in the volumes.

28 MR. RANDOLPH: I am not concerned with the reason for the reduction in the volumes. What I
29 am getting to is the attractiveness of our bid, my client's bid, was based on the original
30 volumes, and when Mr. James says, which I have not actually got to yet, that my client
31 significantly under-priced its bid that is a retrospective statement based on what he can now
32 see, but actually if the pricing of my client's and Meter Fit's ITT bids were looked at in the
33 context of the volumes in that ITT and not what happened thereafter, then it still would
34 remain, as you say, an attractive bid, and it was not under-priced. (To the witness) Do you

1 accept that it was not under-priced with regard to the original volumes quoted in your ex-
2 employer's ITT? A. The price that I'd seen at the time was extremely low, and
3 surprisingly low, and it was based on the volumes and the indications provided in the ITT.
4 That's all I can say on that. All I've said here is that it was a particularly low price.

5 Q You have not actually because ---- A. Whatever words I used, sorry.

6 Q No, your evidence is that you put in two phases, which is why I have tried to deal with it in
7 two phases as well. You say, first of all, that we provided an attractive bid which was
8 relatively low cost, not very low cost, not terribly out of the ordinary, but an attractive bid
9 that was relatively low cost. You also say that UU was BGT's first choice of CMO. That is
10 the first point of your evidence. You then go on to say that after the negotiations had
11 concluded, one, two, three, four, and UU's problems largely came down to the fact that they
12 had under-priced their bid significantly and could not operate profitably given what you say
13 is the constraint. What I am putting to you is that you are absolutely right in so far as
14 para.11 is concerned, it was an attractive bid. It might have been relatively low cost, but it
15 was attractive. It only became what you call "significantly under-priced" when the volumes
16 changed? A. No.

17 Q You do not accept that? A. No, I don't accept that.

18 Q You say ----

19 THE CHAIRMAN: Where do you get "significantly under-priced" from?

20 MR. RANDOLPH: "Significantly under-priced" is in the middle of para.12. We will also see
21 there is another reference to it that I have got to go to in Mr. James's third witness
22 statement.

23 PROFESSOR STONEMAN: Before you go to that, you are talking about this being the "correct"
24 price, if you like, for the invitation to tender volumes?

25 MR. RANDOLPH: "Not significantly under-priced".

26 PROFESSOR STONEMAN: Meter Fit did sign the contract willingly with the post-invitation to
27 tender volumes in that contract. They did not have their arm twisted to sign it with those
28 different volumes. Therefore, Meter Fit must have believed that the price was still
29 appropriate for the lower volumes embodied in the contract, as opposed to the invitation to
30 tender?

31 MR. RANDOLPH: Professor Stoneman, I do not believe there is any evidence to any of that
32 effect before the Tribunal, indeed the reverse. If I may, on that point, just take you to one
33 part of Mr. James's evidence.

34 PROFESSOR STONEMAN: I am interested in Meter Fit, not Mr. James.

1 MR. RANDOLPH: I am sorry, did I say Mr. James, I do apologise, Mr. King, Paul King, who is
2 the sole witness statement, or has given the sole witness statement. His evidence, which is
3 not subject to cross-examination, is clearly, and I can take you to it, because I am
4 concerned, Professor Stoneman, that you are under the impression that that might be the
5 position – if we can go to Mr. Paul King’s witness statement, which is at WS5, tab 17? The
6 evidence of Mr. King on this point is 2834, and you can see where Mr. King deals with p.5
7 of the original statement, which is what, I think, we are on because it was not in bundle
8 form at that time:

9 “The assertion that Meter Fit underpriced the contract is not correct. The pricing
10 was based on the volumes shown in the tender documents ...”

11 Exactly, that is the point I was seeking to make:

12 “ ...and subsequently the contract, being freely available to be exchanged. There
13 was no indication of restrictions on the availability of those volumes. As indicated
14 in paragraph 13, BG found it difficult to meet their volume obligations in the
15 contract ...”

16 Again, a point I tried to take Mr. James to.

17 “... whether that was due to age restrictions that BG wanted to follow is an aspect
18 they should have resolved prior to issuing the tender. The subsequent relaxation of
19 the age criteria to 12 years did help to create further volumes for exchange.
20 Paragraph 16 also confirms that low performance was contributed to by the poor
21 quality of data provided by BG to Meter Fit.”

22 Which I think Mr. James agrees with as well, the fact that it was both ends.

23 “Paragraph 17 also confirms that the subcontractor suffered from the lack of
24 density.”

25 So the point that is being made there, Mr. James, is that there was not a significant
26 underpricing of the bid at the time of the ITT, it may have subsequently appeared to you as
27 such, but that was based on the fact that the price was fixed looking at the volumes and then
28 if everything changes thereafter, and it may be that I was over concentrating on the period
29 between the ITT and the signature, it may be any time between the ITT ----

30 THE CHAIRMAN: It is not really the volumes, it is the fact that they had to make more
31 journeys in order to be able to meet those same volumes, but they were volumes spread out
32 over a wider area than they had assumed when they tendered. Is there anything in that
33 paragraph on p.2834 in your witness statement that you actually disagree with ----

1 MR. RANDOLPH: It is Mr. King's witness statement? A. The degree of difficulty of the task
2 is what they underpriced, but the volumes would not be ----

3 THE CHAIRMAN: But they did not know that you were applying this 20 year age limit?
4 A. Exactly, it was the degree of difficulty of the contract, it was a difficult contract and the
5 volumes are spread all over the North West.

6 Q Had you said in the ITT that the meters to be replaced had to be more than 20 years old?
7 A. No, that cropped up after that.

8 MR. RANDOLPH: Thank you, madam. (To the witness): So you would agree that your
9 evidence now is not so much that there was any significant underpricing of the bid, but
10 there was a mismatch between what should have happened and what did happen with regard
11 to the difficulty. That is what you were saying to the chairman? A. The difficulty of the
12 first contract was apparent fairly quickly with Meter Fit.

13 Q Thank you. Now, and I am afraid, madam, as we will see in just a moment Mr. James has
14 sought to refer and respond to, in fact, Mr. King's witness statement, that part of the witness
15 statement we have been to in his third witness statement, which is at WS5. You seek to do
16 this at 2898, para. 49. You say that you stand by your previous statement – well we have
17 explored that. “Based on extensive and exhaustive discussions with both UU and Meter Fit,
18 this was not only my opinion but also that of the wider British Gas management team.”
19 You refer to a document, and attached at DJ2, which is to this witness statement - yes?
20 A. Yes.

21 Q That, madam, is where I was going to because the whole of that document is yellow.

22 THE CHAIRMAN: Well is this is a point that is just confirming what we have just agreed with
23 Mr. James, which is that the pricing was based on a misunderstanding as to the availability
24 of the meters.

25 MR. RANDOLPH: Yes, and submissions with regard to blame can be made.

26 THE CHAIRMAN: Yes.

27 MR. RANDOLPH: The only point is that Mr. James says: “My view, as set out, has now been
28 picked up and confirmed by others.”

29 THE CHAIRMAN: Well Mr. James has accepted in the witness box that your explanation is
30 correct.

31 MR. RANDOLPH: Yes, and therefore as he was not even at this meeting – (To the witness): I
32 think you were not at this meeting, were you? You refer to a meeting? A. With
33 Linklaters?

34 Q Yes? A. I can't remember, I was at a lot of meetings.

1 Q Well we can turn to it, well I can tell you it is at p.2909 and you are not on the list of
2 attendees. So unless you were somehow missed off you were not there? A. I did not go
3 to all the meetings

4 Q No, there is only one meeting that you are referring to and that is this one. You were not
5 there so you cannot really give us any further evidence. You are simply relying on what is
6 set out there? A. No, I have set out what I have set out what I have said throughout the
7 statement which is the degree of difficulty for the task for Meter Fit was apparent very early
8 on and the price was low, and they came back to the table requesting to renegotiate not far
9 after that period.

10 Q That is fine, and as you were not at that meeting, I cannot take it any further and that matter
11 can be dealt with in submissions. There are only two more small points. Madam chairman,
12 when Mr. James was being cross-examined by Miss Carss-Frisk, and indeed answering
13 questions from you with regard to the issue of contract volumes, and volume commitments
14 – you recall the debate about whether it was midpoint, what was it? Again, this could
15 probably be most easily dealt with by way of a note, but certainly by reference to Meter
16 Fit’s own contract I have investigated the position and it would appear clear that the
17 volumes insofar as we would be concerned would be benchmark volumes, and benchmark
18 volumes are defined and we can set this out in a note. Interestingly, and importantly,
19 benchmark volumes are those that *inter alia* give rise to the trigger points with regard to
20 over and under, it is that benchmark – that is why it is called a “benchmark”. So if, for
21 example, there were to be an over provision, over 110 per cent of the benchmark figure,
22 then that would trigger the possibility of material breach, and it is that in our submission
23 which would be referred to as contract volumes, or volume commitments. You were not
24 involved in the original Meter Fit contract negotiation, it is a very long and complex
25 document? A. In the original or the subsequent?

26 Q I am talking about the original and, indeed, in the renegotiation? A. The renegotiation I
27 was partly involved with on and off, yes.

28 Q “On and off”? A. Yes, it was led by Mr. Avery and we brought in a project manager to
29 manage it.

30 Q Indeed, but do you have any particular recollection as to benchmark volume, and what
31 contract volumes and volume commitments are insofar as that ---- A. Yes. I recollect that
32 both companies wanted to calm things down with regard to the position we’d got to. Both
33 companies wanted to smooth out volumes over a period of time. The other thing that Meter
34 Fit wanted to do was to get some recompense for the first year British Gas settled with

1 them on that. Also, British Gas extended the period by one additional year so they could
2 pick up additional volumes. Everybody shook hands and walked away and were fairly
3 happy with the agreement and the volumes. I've made a comment in my witness statement
4 that I subsequently spoke to the finance director of Meter Fit , Chris Brooks. I went up to
5 Warrington specifically to see him and he expressed his view that everything was okay.

6 THE CHAIRMAN: All right. Thank you, Mr. James.

7 MR. RANDOLPH: You also said in your witness statement that Meter Fit were extremely
8 professional and diligent. A. They were.

9 Q Absolutely. I just have one more question, if I may. I am aware of the time. I do apologise.
10 You have just touched on it briefly. Can we just turn back to your July 2007 witness
11 statement in WS1 at p.804? (After a pause): You have been taken to this page before by
12 Miss Carss-Frisk. Do you remember? A. Yes.

13 Q Good. The last five lines. You agree there that the MSA agreements, when introduced, did
14 limit the overall volume of work available. Yes? A. Yes.

15 Q Yes. You also agree that the volumes were available to CMOs "by virtue of the MSA
16 glidepaths". Yes? A. Yes.

17 Q Good. It must follow from that that you agree with your ex-employer's stance as set out in a
18 document at p.759 of the same bundle. Can you just turn to that? (After a pause): This,
19 so that you are not taken by surprise, is a response by British Gas in 2006 to certain
20 questions asked of it by Ofgem. It is that last page. Do you have that? A. I do, yes.

21 Q Going half-way down that last paragraph:

22 "These glidepath limitations [that is, the MSA glidepath limitations] are likely to
23 have significant financial impacts on both BGT and the CMOs. Meter Fit, for
24 example, would like to undertake higher meter replacement volumes which BGT
25 cannot accommodate because of the impact on the Legacy MSA glidepath".

26 That is correct, is it not? A. That's what it says.

27 Q Yes. A. I don't agree with that.

28 Q You do not agree with it. A. No, because British Gas, if it chooses, could issue far more
29 work to the CMOs. It could operate to the higher thresholds. In fact, it could exceed the
30 higher thresholds if it so chooses. But, the contract is with British Gas and the CMOs - not
31 with National Grid. So, that's the way I see that.

32 Q But then you fail to take into account, with respect, the impact that that rather reckless
33 course of action would have, on its relationship with National Grid because it would

1 automatically trigger the penalty payments arising under the MSAs, would it not? A.

2 Yeah. But, British Gas knew that -- know that and they've always accounted for that.

3 Q Fair enough. Well, at least you are consistent in disagreeing with your ex-employer. Thank
4 you very much.

5 PROFESSOR STONEMAN: Just one point - and it is a point of clarification - from the short
6 discussion earlier -- It is to do with the Meter Fit contracted volumes. The contract was
7 signed in 2002 and the quote had come in with respect to an ITT issued in 2001. Were the
8 volumes incorporated in the 2002 contract the same as, or different from, those involved in
9 the ITT? A. I cannot remember.

10 Q Fine. Thank you.

11 THE CHAIRMAN: Just staying with that, the figures that were given -- At the time of the ITT,
12 which was the end of 2001, British Gas was paying the rentals at the P&M contract rate.

13 A. That's correct, yes.

14 Q No-one had yet mentioned the Legacy MSAs ---- A. No.

15 Q Right. So, that was the context in which British Gas was opening up its business to
16 competition in this tender. A. Yes. The market in metering had opened up and British
17 Gas wanted to exploit it.

18 Q Yes. I am not sure then why the tender amounts for Area 5, which we were told was
19 771,000 over the five year contract out of 2,170,000 -- Why did you not ask for tenders to
20 replace all the meters in Area 5 over the five year period? A. The original tenders, from
21 what I recall, were based over a reasonable period of time to actually accomplish a task. So,
22 it was believed, I think, that fourteen or fifteen years would be the sort of period of time to
23 replace the entire population of meters. So, if you divide the numbers, broadly speaking you
24 will come back to the 770,000. So, 770,000 times two and a half -- They believed that from
25 experience of National Grid and looking over the hill at National Grid that the amount of
26 workload per annum was finite. So, the numbers were based on a realistic projection of
27 what time period and what volumes could be done. So, the actual number in Area 5 of
28 2.170 million would not have been done in the five years. I think it was considered that
29 fourteen or fifteen years would be about the appropriate timescale. My experience of the
30 CMO initial workings up to 2005 -- There is a finite level of personnel available in the UK,
31 and once you start stretching it, it becomes a dangerous occupation. So, calming it down
32 was one of the key features of the later CMO negotiations because British Gas was
33 extremely scared that we were going to have an incident on our hands. So, that's why there
34 was a balance of upper and lower limits.

1 Q Thank you. Mr. Turner, have you got any further questions?

2 MR. TURNER: I have eight questions which will work out at between ten and fifteen minutes, if
3 the Tribunal is prepared to bear with me?

4 THE CHAIRMAN: Yes. Let us carry on and get this witness finished.

5 Re-examined by Mr. Turner

6 Q Mr. James, Miss Carss-Frisk asked you a question on whether British Gas chose its age-
7 based threshold replacing existing meters because the older meters were less valuable to it
8 than the younger meters. From British Gas' perspective, can you help the Tribunal on
9 whether there is a commercial interest in taking out older working meters ahead of younger
10 working meters. A. No.

11 Q Second question: you were shown a document relating to the reasons why British Gas has
12 recently been replacing more meters by means of its CMOs than the glidepath allowance.
13 That is in WS1 at Tab 3, p.853. You were taken to the last full paragraph beginning, "GW
14 explained that there are two reasons --" If you could go not to the paragraph above, but the
15 paragraph above that, and look at the last sentence, beginning, "Since BGT has lost
16 customers --" Just read that to yourself for the moment. (Pause whilst read): Can you
17 explain any further, as to that first reason, why British Gas has come within the below-line
18 rentals band? A. If British Gas loses customers the actual volume of available work to
19 CMOs becomes restricted and therefore there is a potential for the CMOs to installing
20 meters at a continuous rate. They will therefore breach the glide path more quickly when
21 the customer population has dropped.

22 Q Put that away. Mr. Vajda asked you some questions about the unbundling of maintenance
23 and its connection to what was described as the "first visit fit" principle, the connection
24 between those two things. Can you help us on whether you need to unbundle maintenance
25 in order to operate on the "first visit fit" principle basis? A. No. British Gas would elect
26 its CMOs to attend site and change meters. So in terms of CMOs working for British Gas
27 they would attend site and change a meter on the instruction of British Gas.

28 Q Next question: you were asked about the reasons why British Gas has decided no longer to
29 pursue the "first visit fit" approach. I think, in your answer, you refer to a cost benefit
30 having been carried out by British Gas showing a difference in rates of a certain amount.
31 Can you perhaps clarify what led to British Gas being better off and to making that
32 decision? A. British Gas reviewed the annual rentals of prepayment meters provided by
33 CMOs and provided by National Grid, and British Gas decided that they were better off
34 leaving the existing portfolio with National Grid, because maintenance and rental has

1 already been paid. The other reason was, by giving CMOs additional prepayment meters,
2 British Gas determined that there was additional cost plus out of hours costs and transaction
3 costs, and late night calls were much more expensive with the CMO. So British Gas made a
4 commercial decision which was to provide the CMOs with a reasonable workload, but
5 constrain some of it because of those reasons I have described.

6 Q Next question: Mr. Vajda suggested to you that the volumes of replacements of the PPM
7 meters that were made available to CML in particular were cut down when it was known
8 that the maintenance would not be unbundled. Can I ask you to look at two documents in
9 file WS4, first at tab 8. Madam, these are redacted pages, forget that question altogether. I
10 will ask you a substitute question so as not to use up my quota. Madam Chairman asked
11 you a question about the numbers of replacements that featured in the ITTs that were issued
12 in October 2001, therefore prior to the Legacy MSAs, and commented on the difference
13 between the figure for replacement in the ITT and the larger figure for the meter population.
14 Can you throw any further light on what considerations from the point of view of British
15 Gas as a gas supplier go into deciding what amounts of volume to give for the replacement
16 of existing meters under the situation that pertained at that time? A. Critical to the
17 process is the access rate and completion rates, so in terms of volumes available you
18 probably need twice as many meters available to do because you cannot access properties,
19 and the key to a meter operator being a successful meter operator is access to properties,
20 then doing the job safely and not incurring any problems. That's what I understand from
21 that.

22 Q You were asked next about the reasons for the reductions in volumes made available to
23 CML after the time of the invitation to tender. Can I ask you to open WS5, which contains
24 your third witness statement. Could you go in WS5 first to tab 19, which contains your
25 third statement, p.2890. Could you please re-read para.12 in your statement, and in
26 particular the final sentence, what is said about new installations. Are you able to comment
27 any further on the reasons for the reduction in volumes following the original invitation to
28 tender based upon that paragraph, to add to the answer you previously gave to Mr. Vajda?
29 A. All I can add to that is that the invitation to tender numbers were derived from
30 information that subsequently we found flawed, and Steve Lewis, Neil Williams and
31 myself, because we worked through all the numbers for many months. The operation was
32 fundamentally different. More of the work became policy work, as opposed to customer
33 driven, as a consequence of the change from the invitation to tender to the subsequent

1 finally signed agreements. The meter operators were aware of those numbers when they
2 signed them.

3 THE CHAIRMAN: In that paragraph what do you mean by “the ITT forecasts” – “ITT forecasts
4 were seriously flawed”? A. I think “forecasts” is the wrong word. I think “ITT numbers,
5 volumes and requisite jobs”. There were about 20 job types and they were not correct.

6 Q So the ITT forecast there refers to the volumes that you were asking the ---- A. Correct,
7 yes, “forecasts” is probably not ----

8 Q -- CMOs to tender for? A. -- the appropriate word to use, no.

9 MR. TURNER: To put that another way, can you help us on whether those figures in the ITT
10 were firm or indicative? A. They were indicative.

11 Q Finally, if you could turn back to tab 15 in that bundle and look at a document on p.2772 of
12 the bundle numbering on the left hand bottom of the page in tab 15, WS5. A. Page 67?

13 Q That is right. This is an email from you in March 2003 to Mr. Duncan Southgate, entitled
14 “Contract volumes”, and in it you advise him about the overall impact in volume that may
15 be as high as 40 per cent less than outlined in the original ITT, your recent volume
16 submission. Could you please read in the first paragraph the reasons that you give for that
17 decision, this being a document that we have been accused of having partially quoted from
18 and therefore I wanted you to give your full explanation of what you were saying there as to
19 these reasons for the reduction in the available numbers? A. The “customer numbers
20 reduced activity partly enforced by the regulator and Transco’s outstanding meter
21 population” – that is what you want me to comment on, is it?

22 Q Yes, and take them one by one. What did you mean “reduced levels of activity partly
23 enforced by the regulator”? A. I’m referring there to the actual numbers available on the
24 original 20 years, and then 18 years, 15 years and 12 years pots of work available to the
25 CMOs. That’s what I’m referring to there in terms of that particular comment.

26 Q And the second comment, “and in conjunction with Transco’s outstanding meter
27 population? A. I think, the English is not very good, but what I am trying to infer there is
28 that relates to the meter population, or part of the population that we were going to remove
29 which was owned by Transco, so it was Transco’s meters that we were removing.

30 THE CHAIRMAN: What had changed about that meter population which contributed to the 40
31 per cent potential reduction in volume? A. Sorry, what had changed?

32 Q Yes, you are referring to Transco’s outstanding meter population as having changed, and
33 that is one of the things that is causing this reduction in volume from the ITT, but what
34 change was there? A. I think I am referring to the Transco meters that were available to

1 be changed, and I cannot remember absolutely because it is a long time ago, but I think it is
2 just saying that we cannot remove as many of the Transco meters as we want because of the
3 age profile that has been forced on by the regulator, or been advised by the regulator to our
4 regulatory team.

5 THE CHAIRMAN: Oh I see, so that bit is the same as the reduced levels of activity partly
6 enforced by the regulator? A. And it is badly written English, I think, for my part.

7 MR. TURNER: I am sorry, I have been told that your answer to my first question was
8 ambiguous, as to whether British Gas had any commercial interest or not if the meters taken
9 out were younger as opposed to older working meters. Was that or was that not in British
10 Gas's commercial interest? A. The age of a meter?

11 Q That was taken out to ensure that they would be older rather than younger ones? A. The
12 age of a meter was irrelevant to British Gas.

13 MR. TURNER: Madam, the second witness statement has arrived.

14 THE CHAIRMAN: Have you finished then on this topic?

15 MR. TURNER: I have finished.

16 THE CHAIRMAN: When it says "change in customer numbers", is that a market share?

17 A. Yes.

18 THE CHAIRMAN: Have you finished with this witness then?

19 MR. TURNER: I have the second witness statement if we wanted to tie that up. It is an
20 extremely small point.

21 THE CHAIRMAN: Well I do not think we need to take him to it, unless anybody
22 particularly ----

23 MR. RANDOLPH: The only thing that I was slightly concerned about was that Mr. James said
24 that it impacted on Meter Fit but I think Mr. Turner's recollection was that it was just one
25 date of a meeting – yes, it is a date of telephone conversations.

26 MR. TURNER: If we do not need to deal with this now, madam ----

27 THE CHAIRMAN: Well can you just tell us all in the first witness statement, let us all write in
28 the correction is made then by the second witness statement, and then we will know what it
29 is.

30 MR. TURNER: I will read this into the record. Mr. James said:

31 "1. I previously gave a statement in these proceedings on 18th April 2008.

32 2. At paragraph 7 of the first statement I referred to an earlier witness statement
33 that I made on 6 July 2007 in connection with Ofgem's investigation into
34 National Grid's MSA contracts.

- 1 3. At paragraphs 6 and 7 of my original statement, that is the 2007 one, I referred
2 to two telephone conversations which took place between myself and David
3 Thorne of the regulatory team at British Gas which I recall having taken place
4 on 12 and 15 June 2007.
- 5 4. It has been drawn to my attention by my colleague, David Pickering, with
6 whom I spoke shortly after the first of the two conversations in question, that
7 this conversation appears to have taken place on 11 June and not 12 June 2007.
8 I therefore wish to correct this inadvertent error in the original witness
9 statement.”

10 THE CHAIRMAN: So on p.797 two lines up from para.7, it should say: “I have subsequently
11 had two telephone conversations with David Thorne on 11th and 15th June 2007”?

12 MR. TURNER: And in para.7, right at the bottom of that page, the last line, it says, in parenthesis
13 “on 12th and 15th June”, and that should say “11th and 15th June 2007”.

14 (The witness withdrew)

15 THE CHAIRMAN: Yes, thank you very much, Mr. Turner. Mr. Vajda?

16 MR. VAJDA: During the course of the cross-examination it occurred to us, and this may be
17 completely wrong but the Tribunal may not have read the witness statement of my client,
18 and possibly Mr. King as well because we know that the Tribunal has been reading the Grid
19 witness statements in anticipation of cross-examination. It is of course important that the
20 witness statements of our witnesses, albeit not being cross-examined, are read, and I would
21 just make the point because there was some concern from this part of the court that had not
22 happened, and so really I am acting as a mouthpiece. I am sure the Tribunal will at some
23 point read those statements.

24 THE CHAIRMAN: Not only will, but we have! We have all read all of the statements and I am
25 sure we will also read them in the future.

26 MR. VAJDA: I am sure that is very reassuring to those who are instructing me. I can also hand
27 in, when the Tribunal has risen, the pleading note which was promised a day or two ago.

28 THE CHAIRMAN: If you have now you might as well hand it in now. (Document handed to the
29 Tribunal). That completes your witnesses of fact, is that right, Mr. Turner?

30 MR. TURNER: That is so, madam, the remaining witness of fact is Ofgem’s Miss Frerk.

31 THE CHAIRMAN: So we will start with her tomorrow morning. How much longer have we got
32 left in the timetable for Miss Frerc then. Is that tomorrow morning?

33 MR. TURNER: She was due to have finished today, there is an overrun. Three days were
34 allowed for the experts, that was Thursday (tomorrow), Friday, and also on Monday. I am

1 | hopeful that we may be able to come to the end of the evidence, including the experts, by
2 | the end of Monday.

3 | THE CHAIRMAN: Well we will start with Miss Frerk tomorrow morning then. We will resume
4 | at 10.30 tomorrow morning. Thank you very much.

5 | (Adjourned until 10.30 a.m. on Thursday, 22nd January 2009)

6 |