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to customers

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Angela Love
Chairman
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17 March 2005

Dear Angela,

Response to Gas Forum letter to the Department of Trade & Industry re appeals

The purpose of this letter is to respond to certain points made by the Gas Forum in its letter of the 24 February 2005 to Dr David Curran of the DTI, which was copied to Alistair Buchanan. Given that the letter is likely to be of interest to a number of industry representatives, our response will be posted as an open letter on Ofgem's DN Sales website.

Before commenting on the issues raised in the Gas Forum's letter, it is important to note that nothing in this letter fetters the discretion of the Authority in relation to DN sales, including without limitation, any decisions in respect of:

- ◆ the proposed licence modifications currently being consulted upon;
- ◆ Urgent Modification Proposal 0745;
- ◆ the proposed Uniform Network Code (UNC) which is also under consultation; and/or
- ◆ the various 'short form' network codes.

Ofgem does not accept the Gas Forum's assertion that Ofgem has made statements to the effect that the UNC governance arrangements have been agreed. Throughout the consultation process, Ofgem has made it clear to all parties that nothing Ofgem says or does can fetter the discretion of the Authority in respect of any issue associated with DN sales.¹

In relation to the role of the Development & Implementation Steering Group (DISG), although it clearly has no decision making powers, there should be no doubt that the DISG was and is an

¹ By way of example, this point has been made in the Ofgem position paper on UNC governance (*Ofgem preliminary position on the Uniform Network Code modification process & the constitution of the governance entity*, DISG 15, August 2004) through DISG meetings, in the open letters published on Ofgem's website on 4 February (http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10080_20050203OpenlettertoChrisTrainregovernanceFINAL.pdf) and 8 February (http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10120_20040208_20050208MAletterreparticipationinUNCworkgroups.pdf) and in a statement made at the UNC Legal Drafting Forum on 17 February. This list is not inclusive.

important part of Ofgem's consultation process for DN sales. The Gas Forum has stated that attendees of DISG are not representative of the industry at large. However, as you are aware, Ofgem has adopted an open door policy in relation to these meetings, and many interested parties, including a number of Gas Forum members, have used this opportunity to contribute towards Ofgem's consideration of the regulatory, commercial and operational issues arising as a result of DN sales.

Further, Ofgem does not accept that discussion of UNC governance arrangements at DISG has been limited. UNC governance, including the constitution of the panel, was discussed extensively during DISG meetings 9-14, and more recently at DISG meetings 35 and 36. Minutes of these meetings are available on Ofgem's website.

In particular, in response to industry concerns regarding the potential interaction between the modifications process and the appeals mechanism, Ofgem put forward to DISG 17 and subsequently to DISG 36 a number of options that address the concerns whilst still establishing a modification process that protects the interests of customers under a multi-transporter industry structure. As a result of discussions at DISG 36, including an informal (and of course non binding) show of hands of those present, Transco decided to include in its draft UNC a clause which triggers a review of the UNC governance arrangements once the outcome of the DTI's consultation on appeals is known.

In the interests of regulatory clarity, Ofgem has set out its preliminary views on whether the proposed UNC governance arrangements are likely to protect the interests of customers under a divested industry structure.² However, a decision on the UNC governance arrangements has not yet been made by the Authority and as stated before, Ofgem's actions or statements cannot fetter the discretion of the Authority in respect of this or any other issue associated with DN sales. As explained at DISG 35 and 36, these proposals, as reflected by Transco in the draft UNC, are currently being consulted upon as a part of Ofgem's consultation on the network code arrangements.³ The first stage of the consultation process closes on 18 March and Ofgem welcomes the views of Gas Forum members, and other interested parties, in relation to the proposed UNC and the governance arrangements. We hope that the Gas Forum members and other interested parties will take this opportunity to contribute to that process.

For the avoidance of doubt, Ofgem's objective (consistent with its principal objective and duties) throughout this DN sales process is to protect the interests of customers under a multi-transporter industry structure. Ofgem has not sought to preclude the rights of shippers, or any other party, under any future appeals mechanism. The DTI has not reached a view on the appeals mechanisms and therefore it is inappropriate to prejudge this matter. As such, the timing and nature of the DTI's decision in respect of the appeals mechanism is, and should be, totally independent of Ofgem's process in relation to the UNC modification rules and DN sales more generally.

² Ofgem has set out its preliminary views in its preliminary position paper, in an open letter to Chris Train dated 4 February 2004, and at DISG meetings. See *Ofgem preliminary position on the Uniform Network Code modification process & the constitution of the governance entity*, DISG 15, August 2004.

³ *Open letter – Gas Distribution Network Sales – Consultation on Network Code Arrangements*, Ofgem, 4 March 2005

If you wish to discuss any aspect of this letter, please do not hesitate to contact me or Jessica Hunt on 0207 901 7431.

Yours sincerely,

Sonia Brown
Director, Transportation

cc Dr David Curran, DTI