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18th March 2005

Dear Sonia and Richard

Consultation on Uniform Network Code arrangements – Joint Governance Agreement

Thank you for the opportunity to comment on these proposals. I am responding on behalf of the consortium seeking to acquire the northern DN. We would like to record our appreciation of the considerable effort that has gone into producing the UNC and associated documents to the agreed timetable. We also welcome the opportunity that there has been for all stakeholders to input into the development of the UNC.

The principle issue that we wish to raise relates to our consortium's business model. This is to have a lean licensed entity, employing about 40 staff, with an operating contract with a contractor (United Utilities) to operate and maintain the assets. We discussed in the legal drafting meetings including a general ability for a Transporter to appoint an agent and we understand that this principle has now been agreed. The ability to appoint an agent for example would allow the licensee to appoint the operating company to give and receive notices on its behalf and to call meetings. We need the ability to appoint an agent in all of the documents to which the licensee is party. We also need the ability as a User under the Transco code to disclose confidential information to contractors. This can be achieved either by amending the code or by us requesting a separate consent from Transco, and we are comfortable to use Transco's preferred method. Furthermore, the documents refer, for example, to use of own staff whereas we would wish to retain the right to use the staff of our contractor (and perhaps also to use consultants). For the avoidance of doubt the agent referred to here is completely separate from the Transporter's Agency (ie xoserve), which is already reflected in the Code.

Detailed comments on each document are provided as follows:

Appendix 1 – the UNC (overview of policy areas for consideration)

Appendix 2 – the Joint Governance Arrangements Agreement;

Appendix 3 – the Agency Services Agreement.

Appendix 4 – the Interim IExCR Statement

Appendix 5 – the UNC (matrix setting out refined points of legal text revisions for consideration)

I hope you find the content helpful and if you wish to discuss any of the points contained in our response please do not hesitate to give me a call. We welcome a phase 2 drafting of these documents on the 29th March that takes account of the issues that we have raised.

Yours sincerely

A handwritten signature in black ink that reads "Alex Wiseman". The signature is written in a cursive style with a long, sweeping underline.

Alex Wiseman
Gas Regulation Director

APPENDIX I – Policy comments on the UNC

Offtake Agreement (OAD)

1. Clause B3.5.1 (d). Costs associated with removing co-located connection facilities should be borne by the party owning such equipment. If the owner (site user) does not remove such equipment then the site owner should be entitled to remove such facilities and recover any costs associated with removal and disposal from the site user.
2. Clause B4.1.4 (c). We are concerned at the authority given to Transco in this clause. It is our view that an absolute right of disconnection should be limited solely to safety reasons, and that any other reason is insufficient to disconnect connection facilities.
3. Clause F2.4. We do not agree with the liability provision requiring a DNO to compensate Transco NTS for C.V. shrinkage. We would point out that it is not in the DNO's interest to fail to install, operate or maintain equipment. Notwithstanding this, we believe that the drafted proposals are inconsistent with current arrangements. We would request that this area be considered for exclusion from the OAD arrangements, as its intent is self-governing as DNOs and NTS have a common interest in minimising C.V. shrinkage.
4. Clause G2.5.4. Whilst recognising the requirement for Transco NTS to specify a maximum number of Flow Relevant Maintenance Days within an LDZ, the current drafting needs consideration to ensure individual or a limited number of offtakes do not take a disproportionate number of the allowable days. Our view is that the overall number of days (8 x no of offtakes) is acceptable but that a ceiling should be placed on the maximum number of days per offtake allowable. A ceiling of 16-18 days should suffice.
5. Clause I2.5.1. The proposed low demand LDZ value of 60% of 1-in-20 peak day is in our view inappropriate. A value no higher than 50% would be more consistent with the actual requirements of Transco NTS and DNO's. Also we would like to have a firm time at which Transco have to decide whether this provision is being triggered or not.

UNC

6. Clause B6.3.2. This clause anticipates a DNO User applying for an increase in the amount of its NTS Offtake Capacity statement at NTS/LDZ offtakes. This paragraph should be extended to reflect a DNO having the right to apply for a decrease.
7. Clause J7.4. We do not consider it appropriate that DNOs are liable for tolerance excursions when the same treatment is not applied to direct connects.
8. Clause B6.2.1. Linked to the provisions of this section we do not believe the Offtake Capacity Statement should be widely published, and should be issued on a

confidential basis to the relevant party. In any event, we would request that the 22.00 Assured Offtake Pressure be checked for accuracy with respect to the figures issued on this occasion.

APPENDIX II – Detailed Comments on JGA

1. Add at the end of the definition of Confidential Information the words "(but without prejudice to the confidentiality provisions set out therein)". This addition is just to emphasise that the exception in the definition does not mean that information relating to the Code, the AS Agreement and the OAD are not in themselves covered by confidentiality provisions.
2. Clause 3.1.1 - insert after "Standard Special Condition A12" the words "or any replacement thereof" to cover the situation that the condition may still exist but be renumbered or replaced into another condition.
3. Clause 4.1.2 - this Clause should be extended to cover all of the other items listed in paragraph 4 of the Standard Special Condition A12 – our suggestion is to delete the words: “the requirements of SSC A11 of”.
4. Clause 6 - we want to include the possibility of Representatives on the Committee being contractors. Also we want to allow for members of the Joint Office being contractors.
5. Clause 6.5.4 needs to make clear that 2 Transco representatives cannot constitute a quorum. We suggest either having representatives from at least 2 companies or, alternatively, at least 3 representatives.
6. Clause 9.1.2 - as about 50% of the modifications are NTS related we propose that the NTS’s share of costs is 50% and that the DNs are each responsible for one-sixteenth of the costs.
7. Clause 10.1.5 - insert the word "knowingly" before the word "permit".
8. Clause 11 - this clause does not allow us to disclose information to shareholders, contractors or agents. The UNC as drafted allows for disclosure to 10% affiliates and to contractors and this document should be no different.
9. Clause 14.3 - the OAD provides for knock for knock arrangements on people and property and we see no reason for the difference in treatment.
10. Clause 19.1 - prohibits us from subcontracting or appointing an agent which will cause a problem for our business model.
11. Schedule 5 para 2.1.2(a) - if one of the Parties is to enter into contracts on behalf of the other parties then we would suggest controls as to the monetary value and maximum exposure. In excess of that limit or exposure the committee should have the opportunity to approve the contract.
12. Schedule 5 para 2.6.3 "mater" should read "matter".
13. Schedule 5 - the IFA payment referred to in UNC Section G1.15 should be apportioned between Transco and the relevant DN.

14. Schedule 5 para 3.2.1 - first "to" on first line is superfluous.
15. Schedule 6 para B1 - should refer to the Special Conditions which set out the timing of making changes. We suggest deleting the words "SSC A4 and A5 of".
16. Schedule 9 para B2(g) - the cross reference should be to 9.1.2.
17. Schedule 11 para C1 – we would like the ability to appoint secondees from the operating business; these will not be employees of the Employer.

APPENDIX III – Detailed Comments on Agency Agreement

1. Clause 8.5. Where the service provider has been found to have overcharged then the amount refunded should include interest at the prevailing bank rate, in line with normal commercial practice.
2. Clause 9.6. A proviso should be added that this only applies to matters where the Network Operators representative has been given specific authority under Part 7 of this agreement. Where there are multiple representatives, for example, then they do not have authority in relation to all matters.
3. Clause 12.1. Given the importance these services to a Network Operators business it is essential that as a minimum the service provider is contractually committed:
 - to identify causes of persistent failure and the extent to which the Network Operator or another party may have contributed to that failure;
 - to take whatever action is reasonably necessary to minimise the impact of such persistent failure and prevent it from recurring; and
 - to correct the failure immediately or, where this can not be done, put forward a rectification programme setting out the measures the service provider will adopt to remedy the failure and the associated timetable.
4. Clause 15.2. Each network operator is only able to provide this licence in respect of its own data. The drafting should be amended to reflect this.
5. Clause 15.6. This clause should stipulate that the IPR is held on trust on behalf of all network operators.
6. Clause 16.1. The Agent's security policy should be required to incorporate the UK Link Security policy as the transporters undertake to implement this under the UNC clause 1.8.1.
7. Clause 17. The network operator should be permitted to release information to its duly appointed agent. This is essential to our business model.
8. The network operator may also need to release certain data, for example regarding the agent's financial performance, to its shareholders. This should also be permitted.
9. Clause 26.3. There are too many potential steps in the escalation process. We believe it is appropriate for any dispute to be referred straight to the JGA committee.
10. Schedule 8 Clause 4.3. The relevant code indebtedness threshold is determined under the UNC therefore the precise level should not be stipulated under this agreement. The drafting should read: "exceeds the appropriate threshold, in accordance with v3.3.2".

11. Schedule 8 Clause 6.2. It is not appropriate to specify under c, d and e that this equipment should be operated by Transco Metering, as Network Operators may elect to appoint other agents to undertake these activities.

APPENDIX IV – Comments on the IExCR

1. With regard to the process of releasing incremental exit capacity services there is no explicit mention of assured pressures. In order to ensure that incremental capacity be of maximum value, such incremental capacity must be released on the basis of the prevailing assured pressures.
2. The procedures for allocating capacity products do not appear to stipulate how it would be allocated. The current wording suggests it may be on a first come first served basis. We would find this acceptable and it would be helpful if this interpretation could be clarified.