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Dear Richard and Sonia

Uniform Network Code Consultation

Please find attached a completed response by Shell Gas Direct (SGD) to this stage of the consultation on drafting of the Uniform Network Code. In addition to these comments, we comment below on the process which Ofgem and National Grid Transco (NGT) have adopted and raise issues of concern. It must be noted in reviewing our response, that none of the comments should be read as acknowledging process nor acceptance of the policy decisions behind the legal drafting. SGD reserves the right to raise further objections when the Authority makes its formal decision on the Uniform Network Code and associated modification 0745.

Process for consultation

We would welcome clarification about what role this document fulfils. Is this an NGT consultation that Ofgem is being copied in on? Or is it an Ofgem consultation?

In its February 2005 decision document, the Authority noted that "*Ofgem will be issuing its own formal consultation on the UNC arrangements in March 2005. This consultation will be undertaken in parallel to the consultation that Transco will carry out on its own modification proposal to create a short form code from its present network code. It is proposed that the short form code would reference the UNC.*" Is this consultation to which Authority referred? Or is Ofgem's next document, upon which we only have a further 2 weeks to respond, the Ofgem formal consultation?

SGD has asked on many occasions for detailed timetable including dependencies. From the statements quoted above, we had formed a legitimate expectation that the Ofgem consultation would be in line with Ofgem's own consultation policies. This would indicate at minimum a four week consultation period and, given the importance of these changes, a period of 8 weeks would appear to be reasonable. Two 2 week consultations is not the same as a four week consultation and it should not be assumed that this approach provides a satisfactory substitute for due consultation. Advice has been sought from a major City law firm on this process and related DN Sale issues; we do not consider that this process to be satisfactory and it could be viewed as deficient.

We note further that the Authority believe that "*Transco has sought to establish an inclusive consultation process that replicates, where possible, the present network code consultation process and enables consultation on the full UNC arrangements with all interested parties.*"

The present network code consultation process would provide Shippers with 15 business days to respond to a similar consultation, not merely 10 days. Furthermore, if this was going through a normal code process, it would be possible for the Panel to direct a longer consultation period: this would not be unreasonable given the scope of the changes. We reiterate that the fact that Transco (and Ofgem) have held meetings which were open does not change the need for proper consultation processes to be followed in line with Ofgem's own policy on consultation. The approach adopted by Ofgem cannot be viewed as fulfilling the Authority's commitment that we would have "*further opportunities to provide comments on the details of the proposed regulatory, commercial, and operational framework.*" given the restricted timescales.

Exit & offtake arrangements

The Authority stated in its decision document that "*In view of the concerns expressed by respondents to Ofgem's Final IA consultation regarding the timetable for the introduction of the enduring offtake arrangements the Authority has agreed that the implementation of the enduring NTS exit capacity and NTS offtake flexibility arrangements does not need to occur prior to the completion of the DN sales transaction.*" While the impression has been given that the Authority has taken into account the inability of the industry to develop its proposed changes to the exit capacity and flexibility product at the same time as finalizing the necessary changes for the DN Sale, this is not the case in practice.

During the two week window for consultation on the UNC drafting, Transco has chosen to arrange a meeting on its proposals in relation to the new offtake arrangements and circulated papers in the past 3 days. Given that many in the industry will be working on responding to this consultation, that meeting will need to be repeated if any claims are to be later made about giving the industry the opportunity to consider and comment upon the proposals. We repeat that this approach runs contrary to what we expected from the Authority's decision and undermines any claims that opportunities for input, discussion and consultation have been reasonably provided. We note here that the first entry capacity auctions were delayed until January from the previously proposed August date. Developments since February have only reinforced our view that Ofgem's proposed changes to the exit regime should not be implemented but we can not see why the Authority considers a rushed process to be either necessary or efficient.

Governance

While we make some comments on the drafting regarding the new governance section, these should not be taken as supporting these changes nor of acceptance of the approach used by Ofgem and Transco to introduce these drafting changes. We note in Sonia Brown's letter of 4 March 2005, Ofgem's repeated insistence that it has not fettered the discretion of the Authority. However, it remains the case that the changes to governance are unnecessary for the DN Sales. The governance arrangements have not been subject to proper consultation: this consultation cannot be viewed as a replacement for the necessary consultation as no options have been given. The recommendation from the UNC development group was to retain the current governance arrangements until proper consultation could take place. The drafting here is clearly as a result of Ofgem's involvement (see for example, Ofgem's letter of 4 February 2005). Given the views expressed by industry participants, it appears to us to be perverse that Ofgem has taken this approach.

It is difficult under these circumstances to be persuaded by Ofgem's statements about fettering the Authority's final decision. Ofgem staff have indicated that the Authority would be "surprised" to learn that consultation had not already taken place. We expect Ofgem staff to draw to the Authority's attention to the fact that no formal consultation has taken place. It is not the case that consensus has been achieved in DISG. We will comment again upon this issue in our April response to Ofgem's further consultation.

It appears to us that many of the changes relate to the DTI's upcoming changes to allow appeals to Code decisions. In the interests of transparency, we would welcome in NGT's response to this consultation, information about the number of meetings NGT solely has held with the DTI to discuss the appeals arrangements or with Ofgem present.

We are aware of that Ofgem has chosen to respond to the Gas Forum's letter to the DTI outlining its views on the processes to date. This letter only reinforces our concerns. Having open meetings does not substitute for consultation process as required under legislation, Ofgem's own published policy documents, public law provisions nor is it consistent with best regulatory practice. While we have been aware that the meetings were open, we are not aware of any Authority statement that this would be the case. The fact that some Gas Forum members have attended these meetings and contributed does not affect the fact that they were not there is a representative capacity. Statements by Ofgem regarding its views on what would be acceptable can not provide sufficient structure for an Authority decision. Ofgem's Proposed Corporate Strategy and Plan states that "*Ofgem's role in the code modification process is limited to the Authority directing any final independent decision.*" Ofgem's approach to date regarding this issue appears to go somewhat beyond this limited role. While the Authority may wish to satisfy itself that arrangements are sufficient, no analysis or evidence has been provided regarding any deficiencies in the current process (which we would expect if consulted on these changes).

As Ofgem has stated that this the UNC process is Transco to lead, we strongly recommend that NGT replaces drafting in these sections with new drafting based on the governance arrangements in the original Network Code Section Y with only the necessary changes to implement the DN sales; namely Category 1 or 2 changes. This would be consistent with the views expressed by parties (other than Ofgem) during UNC meetings. If NGT considers that the changes it has drafted would better facilitate the Relevant Objectives, it can raise a modification proposal to this effect *after* the UNC is implemented. A better approach would be to raise this as a topic at the governance workstream. This approach would ensure that due process was followed.

Conclusion

Shell Gas Direct reiterates that it has no objection to the sale of four of the gas distribution networks by National Grid Transco. However, we remain firmly of the view that only changes necessary for the sale itself should be implemented through this process. Changes for other purposes should only be introduced following established procedures. Our comments in the attached matrix, with the exception of the governance section, are not extensive as other changes which affect us directly as a shipper appear to be consistent with this approach. We also repeat our concern that the processes being followed by both NGT and by Ofgem are deficient.

Yours sincerely

*This letter is sent electronically
and therefore is not signed.*

Tanya Morrison
Regulatory Affairs Manager

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