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Gas Distribution Network Sales – consultation on Network Code Arrangements

Dear Sonia,

On behalf of the npower branded gas supply businesses I would like to thank you for the second opportunity to comment on the proposed Uniform Network Code in conjunction with the sale by Transco of four of their Distribution Networks.

As referred to in my letter of the 18th March, I have a number of concerns with regard to several aspects of the creation of the UNC, and the final UNC document itself, and I will elaborate on these in more detail later in this letter. I identified in my previous letter several weaknesses in the process and feel that it worth reiterating some of the main points in this final response. We are also responding to Mod 745 at the same time.

In the early stage of this whole process many shippers, including ourselves, were unhappy with the way the process was being managed. We believed that the conduct of the meetings should have come under the governance of the Mod Panel. This was something that Transco steadfastly argued against. As a result, many of the early meetings were not minuted; concerns were listened to but were not necessarily followed up. An additional rule imposed by Transco, was that changes should be limited to the minimum, and just those that would permit the operation of a multi transporter regime. As a consequence there were a number of potential improvements to the code, which, as they fell outside this ruling, were not developed. If this Transco imposed rule had actually been applied to them as well as us, then perhaps we might have not had too much to argue about. However, in the end they made a number of changes to the UNC, which I believe went beyond that necessary to accommodate a multi- transporter environment.

The way the whole document has been restructured at a late stage was also something unexpected. For example the Mod rules were, once they were part of the Network Code, incorporated into a new section Y. Now they have been segregated into a discreet subsection of the UNC. It is not that I have an issue with this change, rather it is the arbitrary nature of the change. At the end of each section of the Network Code there used to be a glossary of terms used. This facilitated the easy cross referencing of

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definitions. Now definitions of some terms used in the Transportation Principal Document can only be found in the Offtake Arrangements Document. If Transco felt it necessary to restructure such aspects of the code then it might have been better if they had created a complete and separate Glossary of Terms.

We endeavoured to review as much of the UNC as possible. However, as identified previously as a result of the constraints placed upon us by the timetable and our own internal resources, we have had to concentrate our efforts upon those sectors, which we believe have undergone the most change. We raised over 125 queries of varying degrees of complexity. Whilst a number of these were routine in their nature (for example cross-referencing or typographical), there were a good number of more important and fundamental queries. I was pleased to note that over 40 % of the points raised resulted in changes in the UNC. We have subsequently reviewed the responses from Transco to the issues that we raised in the first consultation stage, and have noted a number of incidences where I believe that our original query is still valid. These have been identified in the attachment "UNC Consultation Response Matrix Final". Despite the pressure of internal demands upon our resources I believe that this clearly demonstrates our commitment to this whole process.

However, I remain uncomfortable with the fact that this means that there are a number of sections, which, at best, have only had the most cursory of inspections. I recognise that this could result in sections of the new code whose meaning has been changed beyond that which was the intention when it was drafted. I do acknowledge that there will be the opportunity to correct any such changes via the modification process post hive down, but should such an event occur we would expect Ofgem to be supportive in principle of any modification proposal to restore the UNC terms back to the meaning they had in the current Network Code.

It is interesting to note that Transco has used this time to also make further refinements. This is a something of a double edged sword in that corrections to cross references and typographical errors are welcome; but at the same time new clauses have been inserted and old clauses have been deleted without discussion with the rest of the community. I do not intend to identify all such changes within this letter, a longer but possibly not complete list of such additions and deletions (about 100) are to be found in the appendices:

- OAD Appendix Final
- TPF Appendix Final
- General Terms Appendix Final

However, the following is a typical example.

In Section A of the Transportation Principal Document there are new clauses 1.2.3 & 1.2.4. and clauses 3.5.3 & 3.5.4 have been deleted. As a result of these deletions NTS/LDZ Offtakes and LDZ/LDZ Offtakes are no longer defined terms in the TPD.

To enable all Users to be able to understand why such changes have been made Transco should have created a table similar to the UNC Response file that Shippers and other Transporters completed for the 1st stage of the consultation. By doing so it would have made these changes transparent and made understanding of the reasons for the changes more straightforward for market participants. The information in the Drafting Changes Guide gives no clues as to the reason for the changes, but states for example "General drafting improvements".

In conjunction with reviewing the UNC we have considered the Joint Governance Agreement, and the Agency Services Agreement. Whilst we are not party to these agreements, we are subject to their effect. For example, in the case of the former, should the Joint Office not fulfil its obligations in the most efficient or proper manner, Shippers have no direct remedy. In the case of the latter there are number of services identified in the Agreement but not included in the code. Since the code is our contractual position we would have expected the Uniform Network Code to reflect these additional services. These were identified in our 1st stage response in the attachment appendix 2.

I welcome the introduction of the concept of the Agency as the mechanism to minimise the amount of changes for Shippers. It is important that this concept is now enshrined in the Uniform Network Code section V.6.5. Since the services offered by the Agency are described in that section of the UNC, I wonder why the Agency is not recognised as carrying out other duties elsewhere in the UNC.

I note with interest that Transporters have made provision for the possibility of a party to cease to be a Gas Transporter within the terms of Joint Governance Agreement. There is no provision for such an event within the Uniform Network Code. We raised this point at one of the drafting meetings, and the Ofgem representative gave reassurance about the financial health check process that the new Transporters have to undergo. However, events in the past few years have demonstrated, how rapidly the financial position of even the most apparently well run foreign institution can deteriorate. This is by no means to imply any concern or criticism of any current or future market participant, but merely an observation that no provision for such an event exists in the Uniform Network Code.

Throughout the Uniform Network Code there are numerous references to other documents, some in common usage and others which may not have been looked at for sometime. I welcome the fact that Chris Train in his letter of the 29th March stated " we are planning to make these documents available on our website during April together with the various new ancillary documents referred to in the UNC". Although it is only 12th April I am disappointed to note that these documents are not yet available despite the closure of the consultation process and we will take the opportunity to check their appropriateness in the coming months once they are published.

This consultation has been formulated in a way that our final response is only to you. The timetable is such that, presuming the final go ahead is granted we will be immediately into the process of signing the framework agreements. As Transco have introduced a number of changes without consultation or proper explanation, a serious and worrying precedent has been established. There will be no time between the end of this whole consultation process and the proposed Hive Down date of 1st May to discuss, understand, agree, or amend them. Consequently, we will be forced into accepting a document we have not been able to fully review and with which we may not be satisfied. In deciding whether to consent to modification proposal 745 therefore, we would expect Ofgem to do so only after having undertaken their own thorough review of the new UNC and associated agreements, including those amendments included in the current draft which have not been explained to the shipper community. Failure to do so may leave this whole process open to challenge.

I would be happy to discuss any of the issues raised with you.

Yours sincerely,

Simon Howe.
Gas Network Codes Manager