

Ms Jenny Boothe
Ofgem
9 Millbank
London
SW1P 3GE

8 April 2005

Dear Ms Boothe,

**Consultation on the proposed restructure of National Grid Transco's metering
business – March 2005**

Exoteric Gas Solutions Ltd (EGS) has the following comments.

1. The Consultation Process

The proposals have very serious ramifications for consumers, suppliers and non-NGT companies wishing to compete in the metering services market. We are seriously concerned about the manner in which Ofgem has conducted the consultation. The consultation document is seriously defective and the time that Ofgem has allowed for consultation is too short given the complexities of issues and the potential impact on consumers and competitors. We believe that many respondents will base their responses on an incomplete and/or inaccurate understanding of the effect of National Grid Transco's proposals. These concerns are set out in more detail in our letters of 22 March & 6 April 2005.

We are firmly of the opinion that this consultation process should be aborted and started afresh with an accurate and complete consultation document.

2. NGT's Plan

NGT's proposals are clearly intended to implement a similar process to that which resulted in NGT's non-regulated subsidiary Fulcrum Connections Ltd ["Fulcrum"] gaining a monopoly over most of the gas connections market. We have termed this "NGT's Plan."

We would remind you that the performance of Fulcrum has been a major cause of concern to gas connections customers and Ofgem. EGS for one would have nothing whatsoever to do with Fulcrum had we a choice in the matter, which, of course, we don't

as a result of Transco ensuring that Fulcrum has a de facto monopoly over most of the gas connections market via the cosy arrangement between the two sister companies. To be clear, Fulcrum is without any doubt the most inept service provider that we have ever had the misfortune to encounter. In any other circumstance, Fulcrum's woeful performance would have resulted in its contract being terminated by its client. NGT's proposals present a real risk of similar problems occurring in the metering market.

NGT's Plan is already in train. The first step was to form Transco Metering Services (TMS) within Transco GT and to award it an exclusive contract to provide all metering services to Transco without any form of competitive tender. This process was intentionally and cynically designed to enable Transco to avoid the provisions of the Utilities Contract Regulations which are intended to ensure fair and open competition in the provision of monopoly services and thereby to ensure economic purchasing by utility companies [*Note: The Utilities Contract Regulations allow a utility to award contracts for works and services to a part of its regulated business without the requirement for competitive tendering that normally apply*]. It is not in the spirit of the Regulations to award a long term contract to part of a regulated entity with the intention of spinning it outside of regulation to become an unregulated company with a hugely valuable exclusive contract very shortly thereafter. This is precisely what happened with such disastrous consequences for Transco's customers in the case of Fulcrum, which was previously Transco Connections Ltd part of regulated Transco, and was awarded the exclusive contract to provide all connections services to Transco shortly before it was spun out of Transco to become a separate un-regulated company within the NGT Group. NGT's proposals which are the subject of this consultation are the second and final step in NGT's Plan.

The proposed change in status of TMS is effectively a transfer of regulated resources which should be properly valued and reflected in Transco's accounts and price control. It is impossible to gauge whether consumers will benefit from the transfer without a full understanding of the price paid by UMS for the assets, employees, know how, etc.; how these will be treated in Transco's price control; and the terms and duration of the contract between TMS and Transco. These should be made available as part of any proper consultation process.

The secondment and transfer of staff from a regulated business to an unregulated one raises issues concerning the disclosure of information and even-handedness. No information has been provided about the steps, if any, that are proposed to secure that no information from Transco is disclosed to the benefit of NGT Metering when employees are transferred to it.

Another feature of NGT's Plan is that it will ensure that other potential service providers to Transco apart from UMS will be forced out of existence if, as seems likely, Transco does not seek competitive bids from alternative service providers for some years. Potential competitors cannot be expected to retain the required expertise for years without any revenues.

3. Detailed Comments

Our detailed comments using the numbering system employed in the consultation document are as follows.

1.3 No analysis has been presented that indicates any benefit to consumers or other interested parties from NGT's proposals being implemented at all, let alone being implemented with such indecent haste. We are astounded that Ofgem has agreed to conduct the consultation so hastily just to meet Transco's preferred timescales.

1.4 It is disconcerting to note that Ofgem seems to be pre-disposed to ensure to consider respondents views and publish a document in April setting out its views and any actions it considers are required as a result of NGT's proposals without regard to the volume of responses or the gravity or complexity of the issues raised.

2.2 Ofgem's May 2002 proposals aimed at securing effective competition in the provision of metering services have not delivered their stated objective. Today NGT's metering businesses own and operate more than 99.9% of all meters connected to Transco's network. These proposals if implemented will seriously damage the development of competition in this market.

2.3 The RGMA processes have only been operating for 9 months and we have had insufficient experience of them to assess their effectiveness and suitability especially given the inevitable teething problems at cutover and the period of exemption from certain requirements enjoyed by Transco "to smooth over the transition." No avoidable major changes affecting the metering services market should be introduced until the effectiveness and suitability of the RGMA processes has been established under steady state operation.

2.4 NGT's proposals give rise to questions as to whether Transco will be delivering the efficient and economic metering services required by its GT Licence and whether competition in metering services will be restricted, prevented or distorted.

2.8 The effect of Transco reducing prices in this way has been to lock in suppliers to NGT's metering business and make it significantly more difficult for new entrants to compete in the metering services market. This strategy has clearly delivered what it was intended to achieve.

2.9 The revelation that MSA's now cover 95% of the domestic market confirms the success of NGT's strategy to lock in suppliers and create further barriers for NGT's existing competitors and higher hurdles for new entrants to the metering services market.

2.10 The statement made at 2.10 is factually incorrect. It is not true that all suppliers rent non-domestic meters from Transco on the basis of price controlled terms and conditions under a PMA.

3.2 The statement “NGT has agreed to a slight delay in its timetable to implement its proposals” suggests that Ofgem has already decided to approve its proposals.

3.3 Transco has told Ofgem that this restructuring is prompted by a desire to have a metering organisation capable of working effectively in the newly competitive utility metering market and that it will provide a clearer distinction between NGT’s roles of transportation and metering. We believe that Transco’s real aim is to secure its dominance in the metering services market whilst simultaneously removing it from regulation yet continuing to use regulated resources to provide the services.

3.4 to 3.6 The description of NGT’s current structure is fundamentally flawed as it does not properly describe the current relationship between NGT’s metering businesses and Transco GT. Currently, Transco Metering Services is part of Transco’s regulated business and subcontracts a very substantial part of its operations to EMS another part of Transco’s regulated business. If this subcontracting arrangement between EMS and TMS was to continue should TMS become part of unregulated UMS then we would be faced with the perverse situation of an unregulated business providing services to a regulated business using predominantly the resources of the regulated business. It also raises issues of potential breach of the “de minimis” provisions of Standard Licence Condition 43. These are clearly material issues which should be properly described and discussed in the consultation document.

3.7 to 3.10. The details provided about how Transco’s relationship with NGT Metering would be structured in future under NGT’s proposal are inadequate to enable proper consideration by consultees. In particular, it is not disclosed whether a substantial part of NGT Metering’s operations will continue to be sub-contracted to EMS (part of Transco GT). The relationships between the non-Transco DNs and NGT Metering following completion of the DN sales process is not described in sufficient detail. The terms of any contracts for the provision of services from regulated Transco (EMS) to NGT Metering (including those relating to novation at DN sales) need to be understood before anyone can comment properly on NGT’s proposals.

3.12 Ofgem states that the transfer price of metering assets from Transco plc to UMS will be determined on market value. Market value is normally established by open competition. Two issues arise; the first is why is Transco plc not attempting to achieve the best possible price for these regulated assets? The second is how will the market price be determined?

The price to be paid by UMS for the metering assets and how this has been determined need to be understood before anyone can comment properly on these proposals.

3.13 Ofgem states that TMS will be sold to NGT Metering at market value. The comments at 3.12 above apply equally to the market value of TMS.

4.4 NGT did not write to all suppliers and interested parties in early December 2004. Ofgem should not knowingly reach decisions that are informed by consultation responses based on statements that are inaccurate or untrue.

4.10 to 4.15 The cross-subsidy in favour of pre-payment meters is either in the interests of consumers or it is not. It is not a matter that Ofgem should leave to the whim of NGT to determine. The cross-subsidy has long been supported by Ofgem and as it impacts the poor it is clearly one on which Ofgem should make a proactive decision.

NGT's proposals will ensure that NGT Metering is hugely dominant in the metering market and competitive pressures cannot therefore be relied on to help the plight of the fuel poor.

It is our view that the rental charges for pre-payment meters should remain the subject of direct price control.

4.17 to 4.24 Serious public safety issues are raised here. There should be no doubt about who is responsible for ensuring the safety of a metering installation. It should be recognized that there are tens of thousands of domestic premises supplied by medium pressure and intermediate pressure meter installations. It is inconceivable that these proposals should be allowed to proceed until proper arrangements are in place to ensure that safety obligations associated with complex pressure regulators operating at elevated pressures do not default to elderly, infirm or otherwise vulnerable consumers.

This is a matter that should be specifically referred to the HSE for their comments.

4. Conclusions

We have reached the following broad conclusions;

1. The consultation is flawed and has been unduly hurried. NGT's proposals are serious matters that require full and detailed consideration by all interested parties. Insufficient information has been provided to enable consultees to reach informed views on the proposals.
2. The only reason for the consultation and decision being made with undue haste is to ensure that NGT avoids the provisions of the Utility Contract Regulations designed to ensure economic purchasing by utility companies.
3. If, as seems to be the case, NGT is proposing that Transco plc should contract with an-unregulated sister company to provide regulated services to it using predominantly Transco's own regulated resources then it is absurd and must not be sanctioned by Ofgem.

4. If Transco is to contract with un-regulated service providers to provide regulated services then these contracts should be the subject of a competitive tendering process to ensure best value for money. A properly conducted competitive tendering process is even more important if the service provider is to be awarded an exclusive long term contract.
5. NGT's proposals are designed to reduce competition in the metering services market and should not be allowed to proceed. Ofgem should invoke the provisions of Amended Standard Condition 29 (Disposal of Assets) of Transco's Licence to prevent them being implemented.
6. The proposals would compromise public safety if they were implemented without steps having first been taken to ensure that the safety obligations associated with meter installations do not default to consumers
7. Any re-structuring of NGT's metering businesses should be delayed until the RGMA processes have had chance to bed in and their effectiveness and suitability have been established.

We re-emphasize that our response to this consultation has been unduly hurried and we not at all happy that we have unearthed and addressed all of the issues that we should have had the consultation document been more complete and had Ofgem allowed the usual period for consultation. We have discovered factual inaccuracies in the consultation document and we are concerned that there may be others that have caused us to misunderstand the proposals. We remain of the view that the current consultation exercise should be aborted and the process should be started afresh based on a more accurate and complete consultation document with an appropriate and equal consultation period for all interested parties.

Yours sincerely,

Andrew Duffield
Managing Director