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Dear Jenny,

Consultation 78/05 - The proposed restructuring of National Grid Transco's metering business

ScottishPower welcome the opportunity to comment on this consultation. We have responded to specific areas highlighted within the document as follows.

Issue 1 – What are suppliers' views in respect of the extent to which they have been made aware of this proposed sale and the contract options they have been offered by NGT?

We do not believe that the merger of NGT's metering businesses has been presented as an 'option' for suppliers. From our perspective NGT are insisting that suppliers comply with the process, pursuant to which a change in Gas Act Ownership will occur.

We recognise that there has been bi-lateral consultation at a very high level on some of the details. However, this is, in our view, at odds with the process described in Section 2 of the consultation. We would also like Ofgem to note that transfer of title of the relevant meters from NGT to UMS has been presented as an integral part of the same process, as has the novation of the MSA contracts.

Information provided by NGT has been high level and lacking in detail. Moreover, some of the views that have been imparted by NGT have been misleading. For example, initial NGT presentations on the merger referred to the supplier becoming the Gas Act Owner (GAO) after the merger. However, ScottishPower believes that the consumer will in fact be the GAO by default. In any event, no support for the modification of this change has been offered or suggested by NGT to date. (Further comment on this matter is made below at Issue 4.)

Issue 2 – Whether suppliers consider that they can effectively access the price-controlled tariffs for gas meters under NGT's proposals?

Under the Novation/Merger, 95% of the domestic market will sit outside of the price control tariff regime. There will be little constraint on NGT's ability to vary rental charges and rebalance their portfolio. Suppliers and the market will have very limited visibility, comfort or control on meter rental pricing.

Suppliers were not offered the choice between staying in the previous price-controlled terms or moving to the novated contracts, as stated in the consultation. Suppliers were offered, however, the option to take up the terms of the Metering

Services Agreement (MSA) or stay with the blue book priced Review of Gas Metering Arrangements (RGMA) standard contracts. Suppliers who have signed the MSA contracts have no choice but to move over to the novated contracts as enacted by the clauses in the MSA contracts at the same time as NGT are merging their metering businesses. Furthermore, as indicated at Issue 1 above, NGT are choosing to substantially amend the terms of the novated MSA contracts. We do not believe the timing of this is appropriate.

ScottishPower are concerned that control of the pricing for gas meters is being moved out of ex-ante regulation entirely into the commercial market. This is compounded by the creation of an unregulated provider, NGT Metering, which is likely to be dominant in the market. We would expect Ofgem to carry out a review of the state of competition in the market. Preferably this would happen before the Novation/Merger but if this is not possible then as soon as possible thereafter.

Issue 3 – What issues arise from the rebalancing of meter charges?

The primary impact of rebalancing meter charges will be the impact on customers in debt and fuel poor and vulnerable customers across the United Kingdom, many of who rely on prepayment meters (PPM) to budget.

On a point of information, under this Merger/Novation pre-payment meters fitted prior to October 2000 will increase in rental from £29.73 to £48.24, not £46.75 as stated in the consultation. This is will be an increase of 62%. In addition meters fitted from October 2000 to October 2002 will increase from £24.82 to £43.33, a 57% increase. This change in pricing information has only been available to suppliers from 24th March 2005.

We recognise that there will be a benefit to MSA signatories of reduced rental on the credit meters. However, ScottishPower believes that a supplier with a relatively large proportion of PPMs in its portfolio would be hit hard unless it does a cost pass-through to customers. This would be an unfortunate move at a time when fuel poverty is so high on the agenda.

Ofgem have suggested the disapplication process be utilised under the price control conditions of Transco's transporter licence. ScottishPower would be minded to support such an approach. In any event, we feel that any financial impact that the rebalancing will bring should be delayed until at least Q1 2006 to allow suppliers to assess and adjust to the financial impact.

Issue 4 – Whether there are any issues raised by the proposal in respect to the transfer of status of the 'Gas Act Owner' and the associated responsibilities that are passed on with this transfer?

On a proper interpretation of the Gas Act, we believe that an inevitable consequence of the Merger/Novation is that consumers will become the 'Gas Act Owners' of their meters. Regardless of any contractual or regulatory arrangements put in place, this means that customers will have a statutory responsibility. They will be exposed potentially in tort, delict or for breach of statutory duty. Even Transco's proposal at the CRG and Blackwater forums that their systems will keep the GAO at "T=Transporter" is of no protection to the customer. The industry will be obliged to inform our customers of their exposure and this will clearly be a cause for concern to them.

Significant system modifications would be required, therefore, to amend the GAO flag to “Consumer”. Transfer of the GAO to the consumer will necessitate the amendment to over 20 million metering records. It is unclear who would bear the costs of this. ScottishPower is of the view that it should be NGT.

We are also concerned that after the Novation NGT would be within their right to no longer provide a Post Emergency Metering Service (PEMS) in the domestic market, if Transco Metering carried forward with its “T=Transporter” proposal. Transco could reasonably argue that the GAO flag on the system is incorrect and therefore they would be unable to touch one of the new metering business’s meters.

Furthermore, there are questions around the true obligated party to pay rental on the meters. Once the consumer is the GAO it could be reasonably argued under the Gas Act that the consumer is the obligated party to pay rental to the new metering company. Would the consumer have to enter into a contract for the rental of the meters with UMS directly?

We believe that Ofgem should consider and investigate the option of implementing a Statutory Instrument to modify the Gas Act to include the GAO identifier of “M=Meter Asset Manager”. This would allow the transfer to happen freely and prevent any of the deeply concerning issues above to come to the fore, although there would still be system costs which the industry would have to bear to support it.

Issue 5 – Are there issues concerning the Weights and Measures Act 1985 that should be considered as part of NGT’s proposal?

Ofgem have identified a risk under the Weights and Measures Act 1985 in excess of £1 billion for the potential need to replace legacy imperial meters. However, it is not clear to us where that risk lies but it seems that the risk could lie somewhere between the Consumer and the Supplier. We share Ofgem’s view that it would not be in consumers’ interests to force the total replacement of all imperial meters.

Nor would it be acceptable for suppliers to bear the full costs and liabilities of this issue and we would expect liability to remain with Transco Metering. The suggested amendment, under Issue 3, to the Gas Act for ‘M=MAM’ would also go a long way to addressing this issue, in terms of liability.

Summary and recommendations

ScottishPower is of the view that this merger cannot go ahead until these critical issues are resolved. While we do not object to the merger in principle, we believe that the timing and the way it is being handled are inappropriate. We look to Ofgem to ensure that the serious issues surrounding this merger of NGT’s metering businesses are given all due consideration.

We have no objection to Ofgem publishing this response.

Yours sincerely

Maurice Hanratty
Regulation, Legal and Commercial