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11<sup>th</sup> March 2005

Dear Sonia

### **Formal Consultation under Section 23 and Section 8AA of Gas Act**

Thank you for the opportunity to comment on these proposals. We would like to record our appreciation of the considerable effort that has gone into producing the necessary licence drafting and supporting document.

This formal process is the culmination of an extensive and transparent process on licence changes over many months. This process has included a number of previous consultation documents and detailed reviews involving all industry parties at the DISG. This has provided the opportunity for us and for all other stakeholders to raise and discuss areas of concern with Ofgem. We have found this approach helpful.

At a policy level we have only one significant concern in relation to the proposed transporter licence changes covered by these notices. This relates to the blocking threshold set out in the private collection licence modification procedure. We understand the need and desire to replicate the appropriate statutory procedure. However, when the DTI set the thresholds following the 2000 Utilities Act it took into account a range of factors that applied to the different categories of licensees. In doing so, its clear intention was to set the threshold at a level such that licensees within the same corporate group did not on their own achieve the threshold. Where this was not possible because of the small number of licensees, as for example in electricity transmission, a different threshold level was set. The small number of DN owners is more akin to the situation that applied to electricity transmission and that to replicate the statutory procedure the same approach to the blocking threshold should be applied in the private CLM procedure. We recognise

that there may be insufficient time to change this process before sale, but we would welcome the opportunity to reconsider the CLM procedure post sale.

There are two broad areas where the consortium has previously raised concerns:

- Conditions in the licence that are being applied at the DN level where previously they have been focussed at the NTS level (for example system development and system management).
- The suite of obligations in relation to metering.

Whilst we now accept and recognise Ofgem's objectives in relation to these conditions we feel both areas would merit early review post sale of their application in light of operating experience in the multiple distributor environment.

A number of conditions have been updated in parallel with the outcome of the electricity price review and we would anticipate that any amendments to the drafting of the electricity conditions that have taken place subsequent to the issue of this notice should be encompassed in the final changes.

We have a small number of detailed comments in relation to the drafting of the licence that are contained in the attached appendix.

I hope you find the content and timing of our response helpful and if you wish to discuss any of the points contained in our response please do not hesitate to give me a call.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Wiseman', with a long, sweeping horizontal stroke at the end.

Alex Wiseman  
Gas Regulation Director

## **APPENDIX I – Detailed Comments**

### Appendix 8A

#### SSC A3

Definition of "supply of transportation services" – this drafting is misleading as it refers to the balancing of the transportation system. The drafting in paragraph c is aimed at the procurement of shrinkage and the words "balancing of the transportation system" could be deleted without effect.

#### SSC A4

Paragraph 2A - the cross references to (b) should be to (d).

#### SSC A10

In paragraph 6 the cross-reference to standard condition 5 should be to Standard Special Condition A50.

#### SSCA11

Definition of "network code modification procedures" the cross-reference to paragraph 6 should be to paragraph 7.

#### SSC A14

Paragraph (b) requires the licensee to comply with the network code and the As Agreement "in this regard". This construct means that the licensee suffers potential double jeopardy i.e. he will be in breach of the code, in breach of the AS Agreement and in breach of the licence. This is unnecessary and should be removed.

#### SSC A15

Paragraphs 1 and 3 of this condition overlap and say very similar things. The drafting here could be simplified.

#### SSC A49

Paragraph 4 - the cross references to A50 should be to A51 (appears 4 times)

### Appendix 8D

#### D1

The switch on/off mechanism in this part and in Part A give rise to the potential for conflict as the standard conditions in Parts A and B could be switched off under one condition and left on under another. Ofgem mention the point as having been raised by a purchaser in para 3.38 but do not comment further on this point. We still think it is inappropriate for this potential conflict to exist.

## D6

Paragraph 2 states that the DN does not have to carry out work on the NTS unless requested to do so by Transco. However if Transco do so request then the DN is obliged to carry out such physical works. Under paragraph 3 the licensee has to ensure that its staff are adequately trained to provide the service to the NTS. This would mean that the DN would have to train its staff to work on the NTS in case Transco did request the DN to carry out physical works. We think this is onerous. This could be simply rectified by providing that the licensee does not have to provide additional training to its staff in paragraph 4.

The DN should be indemnified by Transco against third party claims when providing this service. The Ofgem response to this at para 5.268 is that this is a commercial issue to be dealt with by the DNs and Transco. However the licence condition as currently drafted removes any commercial negotiating position of the DN. The DN is obliged by licence to perform the service so why would Transco enter into an agreement to cover third party liabilities. This position is to be contrasted with Standard Special Condition A41 where the obligation is enter into an agreement to provide an emergency service to IGTs and the licence specifically requires that the agreement may include appropriate indemnities against third party claims. A similar provision should be applied to this emergency services obligation with regard to third party indemnity.