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Dear Sonia

National Grid Transco - Potential sale of gas distribution network businesses
Formal consultation under Section 23 and Section 8AA of the Gas Act 1986

Thank you for giving us the opportunity to comment on the above consultation.

E.ON UK has not attempted to review all licence changes preferring instead to focus on those aspects of the proposals that offer safeguards against inefficient fragmentation of existing market rules, charging arrangements processes and systems. We also comment on other matters that could in our view materially affect customers such as licence conditions related to the proposed enduring offtake arrangements. A number of detailed points were made in our response to license consultations published at the end of 2004. Rather than restate many of these points, we have made comments only where we consider significant revisions to the drafting or policy choices are required.

Generally we consider the package of licence changes proposed will provide a coherent and viable regulatory framework for gas transportation following the sale of gas distribution networks. The Ofgem staff involved in this work should be commended for their persistence in pulling together many complex diverse issues, balancing competing demands of the various stakeholders and facilitating consultation wherever possible. We are particularly pleased that Ofgem has listen to shipper concerns over the need to establish national governance/management of market rules/charging methodologies and encouraged a reluctant Transco to establish relatively broad based agency arrangements.

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Nevertheless we have key concerns about allowing twice yearly as opposed to once year changes to certain charges, drafting that too easily permits the movement of modification rules into short-form codes, drafting that foresees/requires the introduction enduring offtake arrangements (despite the case for such changes having yet to be made), the introduction of unduly onerous obligations and some unnecessarily prescriptive drafting.

Existing Transco plc licence conditions

Amended Standard Condition 1 – Definitions and interpretation

The definitions of NTS exit capacity and NTS exit flow flexibility should be drafted in such a way as to facilitate only the day 1 ('interim') arrangements. To draft these definitions in such a way that assumes the introduction of a particular form of 'enduring' arrangements could pre-judge the outcome of a possible future UNC modification proposal. The exit flow flexibility product is a concept that may form part of the 'enduring' offtake arrangements, but it certainly not one that needs to apply to shippers at this stage.

We also note Ofgem may conduct a further 'sweep-up' section 23 processes to deal with any minor inconsistencies that might emerge e.g. in relation to definitions to ensure consistency with the UNC. We would support such a move.

Standard Condition 2 – Application of Section C (transportation services obligations)

No comments.

Standard Condition 3. Payments by the Licensee to the Authority

No comments

Amended Standard Condition 4 – Charging Gas Shippers – General

We are disappointed that despite strong representations from shippers and their customers Ofgem are willing to allow twice yearly changes to charges, even though they had originally advocated a once a year change.

Shippers and customers continue to have a strong preference for a 1 October once a year change. In our opinion it is the benefit of certainty of a once a year change (aligned to annual contracting rounds) that is important. Variation from year to year is inevitable, but this is an unfortunate consequence of the volatile charging arrangements that have been established in recent years. We believe such price volatility is bound to increase if new exit capacity and flow flexibility auctions are introduced as part of any 'enduring' arrangements. This is because likely revenue over or under recoveries for such auctions will inevitably lead to adjustment to certain transportation charges. We believe Ofgem should focus on addressing the factors that force transporters to adjust charges too frequently, namely the best endeavours revenue recovery obligations and the proposed move away from administered approaches for charging for exit capacity

We understand Transco concerns with regard to its revenue recovery obligations. These concerns however, should not take precedence over the interests of customers. Nor should requests from potential buyers to align charging changes to the formula year (1 April start) rather than the established gas contracting year to which customers and suppliers are familiar be entertained.

Rather than causing adding uncertainty and difficulties to shipper- suppliers and their customers through twice yearly changes, it would be better to directly address Transco's concerns about allowed revenue recovery. A mechanism needs to be found whereby transporters are 'not out of pocket' as a result of their decision to delay a price change to the start of the next gas year. The dead-band around which the standard interest rate would apply appears to be a pragmatic way forward.

We welcome proposals which are designed to mitigate against inefficient fragmentation of the distribution charging arrangements, including the establishment of a Joint Office (JO) to co-ordinate proposed changes across the industry. Unfortunately, we do not believe the transportation charging safeguards go far enough. Customers are worried that the emergence of different DN charging methodologies could increase costs for some consumers, lead to different treatment of similar size customers simply on the basis of network ownership and that added complexity will limit the number of suppliers willing to compete in particular segments of the market. Multi-site supply contracts could be particularly affected if shipper-suppliers have to offer and manage national contracts across a number of locations connected to different DNs with different charging arrangements.

As a major shipper-supplier we have identified that one of our key drivers of increased costs is the introduction of new and different discrete charging elements. We recognise however, that different levels of charges may be appropriate for particular DNs as this may in turn better reflect costs incurred in the provision of transportation services on a particular network. This additional cost reflectivity may be justified and from our point of view is less significant in driving our costs.

We consider that it is important to establish licence conditions that subject all DNs to national charging methodologies managed by the Joint Office. This would be constituted in such a way as to not preclude different levels of charges within particular networks but would provide a stable framework within which each of the discrete charging elements remains consistent for billing purposes across the whole country.

Amended Standard Condition 4A – Obligations as Regard Charging Methodology

See comments about the need for national charging methodologies above.

Standard Condition 4B – Connection Charges etc

No comments.

Standard Condition 4C – Charging of Gas Shippers – Supplemental Connection Charges

No comments

Amended Standard Condition 4D – Conduct of Transportation Business

No comments

Amended Standard Condition 4E – Requirement to Enter into Transportation Arrangements in Conformity with the Network Code

We are pleased that we have avoided the need for a separate offtake code and support the incorporation of such terms within the UNC with any changes subject to the UNC modification rules. This approach is consistent with our view that all commercial terms for the transportation of gas from 'beach to meter' should reside in one place with all parties to the current network code continuing to have rights to propose changes to such terms.

Standard Condition 5 – System Development Obligations

No comments

Standard Condition 5A – Information to be Provided to the Designated Registrar of Pipes

No comments

Amended Standard Condition 6 – Emergency Services and Enquiry Service Obligations

No comments

Standard Condition 7 – Provision of Information Relating to Gas Illegally Taken

No comments

Amended Standard Condition 8 – Provision and Return of meters

No comments

Amended Standard Condition 9 – Network Code

We support the introduction of the new relevant objectives. The promotion of efficiency in the implementation and administration of the network code and/or the uniform network code, something E.ON first advocated in a paper presented to the DISG last summer. **Does this objective need to be made more explicit however, to make sure there is no doubt that this relevant objective applies to the Agency in implementing the UNC?**

The current drafting of A11 (8) makes it too easy for the DNO to seek to opt out of the common UNC modification procedures. These common governance arrangements are vital control in avoiding inefficient fragmentation of the market rules and the potential large costs that shippers may face as a result. We believe it is important for licensees wishing to opt out of these arrangements to seek a specific licence change to facilitate this at the time. **Thus we believe the words “unless the Authority consents otherwise in writing” should be deleted.**

It is also important to ensure that this clause is not used as a 'back-door' route to allow modification rules or for that matter any other UNC terms to be 'carved-out' into individual codes. Such changes should in our view always be subject to a UNC modification procedure with parties potentially having the opportunity to appeal an Authority decision on any such proposal.

We are concerned that clause A11 10 b) is **unduly prescriptive and would suggest it is best deleted** as such procedural matters are best dealt with within the UNC modification rules. The clause seems to have a BSC flavour to it and shippers generally do not wish to adopt the complex, bureaucratic and sometimes ineffective alternative modification procedure of the BSC. The BSC allows little scope for refinements to the original proposal and the process for developing alternatives has become a vehicle for sabotaging the original proposal, (e.g. *P75 Introduction of zonal transmission losses* where some parties sought to phase its introduction).

Under a Gas Forum proposal 713¹ if a consensus emerges in the workgroup prior to the consultation phase the original proposal could be 'refined' and adopted as the proposal. In such circumstances the inadequate pre-refined proposal would not go forward to the consultation stage. In addition viable 'alternatives' may emerge in workgroup discussions where these are not adopted as the original proposal. A fast-track process has been proposed to enable such separately numbered 'alternatives' to be considered as discrete but parallel proposals. This provides clarity in terms of modification decisions and any basis for future appeals (whatever the criteria for appeals may be).

Looking at the 11 10(b) and 11 11(b) drafting raises some concerns that the definition of 'alternative' may preclude legitimate refinements of proposals during the workgroup stage and could possibly prevent 'alternative' proposals being considered under a separate modification number. We understand points about not giving proposers two "bites of the cherry". The Gas Forum proposal would only allow one good chance for the proposer, although many parallel discrete, separately numbered 'alternatives' would be permitted by others.

E.ON UK is an active participant in all the industry code modification procedures and it is fair to say much time is wasted in process bureaucracy (the BSC disproportionately so). In our view this is contributing to progressively diminishing participation over time. Equally we do not want the prosecution of a particular modification to become a tactical assault course for proposers. Shippers want a streamlined and effective UNC modification process that delivers wherever possible all viable solutions (plural and if necessary more than 2) to the Authority for a decision.

In addition currently third party participants can only propose modifications to certain defined areas of the code. It is also important to ensure that the ability of such third parties to propose alternatives is also limited to the same defined areas.

We welcome the new clause requiring the transporters to publish the UNC on a web-site which is freely available to interested parties. It needs to be made clear that any changes to these documents are promptly updated. This is something that could be managed by the Joint Office or the Agent. Ideally we would like to see an Elexon style

¹ Although not approved by the Authority because of minor deficiencies in drafting it was considered to have merit. I was somewhat ironic to see this proposal fail because (the current modification procedures prevent shipper proposals being improved 'in-flight' without the support of Transco).

website providing all relevant industry code and transportation charging related documents, including modification reports, Panel and workstream reports.

Standard Condition 13 – Change co-ordination for the Utilities Act 2000

No comments

Standard Condition 14 – The Supply Point Administration Agreement

No comments

Standard Condition 16 – Pipe-line System Security Standards

Although, we accept that the new revised 1 in 20 obligation set out in Standard Special Condition A9 does not in itself seem to reduce the access rights currently enjoyed by NTS direct connects, it does anticipate the introduction of a flexibility product as part of the 'enduring' arrangements. As such **the redefinition of the 1 in 20 obligation for day 1 post DN sales should be removed.**

Amended Standard Condition 17 – Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick: Arrangements in respect of Meters
The proposals seem sensible.

Standard Condition 18 – Provision of Services for Persons who are Blind or Deaf
The proposals seem sensible.

Standard Condition 19 – Arrangements in Respect of Powers of Entry
The proposals seem sensible.

Standard Condition 19A – Authorisation of Officers
The proposals seem sensible.

Standard Condition 19B – Exercise of Powers of Entry
The proposals seem sensible.

Standard Condition 20 – Standards of Performance
The proposals seem sensible.

Standard Condition 21 – Complaint Handling Procedure
The revised Ofgem proposals seem sensible.

Standard Condition 22 – Preparation, Review of and Compliance with Statements and Codes
The proposals seem sensible.

Standard Condition 23 – Record of and Report on Performance
The proposals seem sensible.

Amended Standard Condition 24 – Provision of Information to the Authority
The detailed drafting changes seem sensible.

Amended Standard Condition 25 – Long Term Development Statement

It is important for Transco to provide a co-ordinated view of supply demand fundamentals and the associated investment in 'strategic' infrastructure. Any DNO statements should inform Transco's assumptions underpinning the NTS long term development statement. We support the flexibility in timing but do not see the need for detail statements relating to lower pressure systems. Removal of the words "high pressure" goes beyond what is necessary to facilitate the sale of gas distribution networks. There is a risk that combined with broadly drafted clauses that allow the Authority to dictate the format of such statements could lead to unnecessarily intrusive regulation, for little or no discernable benefit to consumers.

Standard Condition 27 – Adjustments of Amounts by Reference to the Retail Price Index

No comments.

Standard Condition 28 – Termination of Shipping Arrangements

No comments

Amended Standard Condition 29 – Disposal of Assets

We consider that clarity with regard to the meaning of, "the licensee shall not dispose of the relinquishment of operational control over any transportation asset unless in accordance with this condition." Potential buyers have concerns about whether SOMSAs fall into this category and whether the consent of Authority is required.

E.ON UK remains of the view that Transco's current centralisation of DN systems operations together with the likely reluctance of some buyers to wish to take SOMSA activities in house will mean that SOMSA arrangements may persist for longer and may remain in place way beyond the current price control. Furthermore we consider that the continued centralised management of DN system operation activities is desirable as it may well reduce the motivation of new DN owners to seek to inefficiently fragment the arrangements.

If licensees consider that they have to seek Authority consent to enter into SOMSAs, the Authority could through consent conditions force such licensees to take such activities in house, even though such a licensee may consider that it is more efficient to allow Transco to continue to manage these activities on their behalf.

Amended Standard Condition 30 – Regulatory Accounts

No comments

Standard Condition 30A – Change of Financial Year

No comments

Amended Standard Condition 31 – Supply Point Administration Services

We welcome the latest changes proposed by Ofgem with regard to obligations that should be made through the agency. These changes will help protect against the risk of both degradation of data quality and inadvertent fragmentation of the arrangements.

Amended Standard Condition 32 – Interpretation of Section C

No comments

Standard Condition 33 – Designated Registrar of Pipes

The suggested changes seem reasonable. If the Authority were to make any directions with respect to this condition it would seem reasonable to have a single body that manages this (e.g. the Agency).

Standard Condition 38 – Availability of Data Formats

We support the referencing of obligations under the Network Code and Agency services agreement

Amended Standard Condition 39 – Restriction on Use of Certain Information and the

Independence of the Transportation Business

Given the arrangements are similar to those to be found for electricity networks business we are broadly supportive of the proposed arrangements for internal separation. Nevertheless the shift to a “best endeavours” from a “reasonable measures” obligation seems unduly onerous. It is the practical internal separation measures together with actions to assure compliance that are important. The strengthening of the obligation could simply add to unnecessary costs without providing additional benefits.

It is also important to note that reasonable measures is the term used in electricity distribution licence so on grounds of equivalent treatment between network businesses across gas and electricity the same term should be used for gas transportation licences.

Standard Condition 40 – Appointment of Compliance Officer

Fine

Standard Condition 41 – Prohibition of Cross-Subsidies

No comments

Amended Standard Condition 45 – Undertaking from an Ultimate Controller

No comments

Amended Standard Condition 47– Indebtedness

No comments

Standard Condition 48 – Last Resort Supply: Payment Claims

The proposal to coordinate the levying of charges to cover supplier of last resort claims through the agent is to be welcomed.

Special Conditions

Special Condition 1 – Interpretation and Construction

No comments

Special Condition 2 – Restriction on Activity and Financial Ring-Fencing

Nothing in the licence conditions should preclude or discourage the extension of SOMSAs beyond the end of the current price control. See comments under Amended Standard

License Condition 29 above. It is not clear that the new DN owners will wish to eventually take all DN system operation activities covered by SOMSAs in house

Special Condition 3 – Availability of Resources

No comments

Special Condition 4 – Investment Grade Credit Rating as Issuer of Corporate Debt Special

No comments

Condition 5 – Cross-Default Obligations

No comments

Special Condition 9D – Restriction of Prices for LNG Storage Services

Proposals seem reasonable

Special Condition 17 – Operational Guidelines for Balancing

We recognise that this concept is now redundant as it has been superseded by the System Management Principles Statement. We remain concerned about setting out key commercial gas transportation terms outside the UNC. We have always considered that providing a vehicle for Transco to use to hive-off market rules into a non code document to be unhelpful, not least because it prevents shippers putting forwards changes to such rules via a modification proposal.

Special Condition 18 – Conveyance to Independent Systems

No comment

Special Condition 19 – Emergency Services to or on Behalf of Another Gas Transporter

We remain concerned that a satisfactory solution to ensuring the medium term continuation of the first response services to IGTs has yet to be found. It would seem appropriate, if only as an interim measure to the end of the current price control, to **apply licence conditions to oblige relevant transporters to both “make safe” and carry out “repair and restoration”**. We do not consider that it is prudent to rely on the 6 month extension to Transco’s current contracts, as any Ofgem review on the theoretical contestability of these services and any consequential licence changes is almost certainly take longer than this. We would urge Ofgem to look again at this condition.

Amended Special Condition 23 – Provision of Meter and Meter Reading Services

No comments on the drafting. Nevertheless being forced to deal with a multitude of meter service providers will add to the costs of shipper-suppliers.

Special Condition 25A – Assignment of Licence

No comments

Special Condition 26 – Prohibited procurement activities

We welcome the added clarity provided by Ofgem’s latest proposals.

Special Condition 27 – Licensee’s procurement and use of system management services

The drafting of Special Condition 5 should only be relevant to the day 1 ('interim') arrangements. **The reference to NTS exit flow flexibility under clause 6 (c) (iii) should be removed.** To draft this into licence conditions at this stage assumes the introduction of a particular form of 'enduring' arrangements which would pre-judge the outcome of a possible future UNC modification proposal. The exit flow flexibility product is certainly a concept that may form part of the 'enduring' offtake arrangements, but is not one that needs to apply to shippers at this stage.

We are concerned about the extent to which DNO will wish seek to offer system management services outside the UNC. We have already seen Transco hiving-off similar commercial rules from the network code. There is a very real risk this will be replicated with DNO procuring widely differing services increasing transaction costs and complexity for shippers and customers. We remain unclear to what extent services will be defined within the UNC or not.

Special Condition 28A – Revenue restriction definitions

No comments

Special Condition 28B – Restriction of revenue in respect of the NTS transportation

owner activity, Distribution Network transportation activity and NTS system operation activity

No comments

Special Condition 29 – Allocation of revenues and costs for calculation under the price control

No comments

Special Condition 30 - Supplementary provisions of the revenue restrictions

No comments

Amended Special Condition 31 – Restriction of Prices in Respect of Tariff Capped

Metering Activities

No comments

Special Condition 32 – Non-discrimination in the provision of metering activities

No comments

Special Condition 33 – Information to be provided to the Authority in connection with the transportation system revenue restriction

No comments

Special Condition 34 – Licensee’s methodology for determining incremental entry

capacity volumes

No comments

Special Condition 35 – NTS performance reporting

No comments

Special Condition 36 – LDZ incentive scheme and performance reporting

No comments

Special Condition 37 – Exit code statement

We consider that these conditions will continue to be required and should not cease to have effect at hive-down. The Ofgem proposals assume implementation of (‘market based’) enduring offtake arrangements and that this will remove the ‘administrative arrangements’ that persist with the ‘interim’ regime. Such an outcome is by no means certain so it would be unwise to hastily remove this condition.

Special Condition 38 – Restriction on Use of Information deriving from the EnMo

Business

No comments

Special Condition 39 – Charging of Gas Shippers – Domestic Infill Premises

No comments

Schedules to Transco’s GT licences

We do not consider that it is appropriate to introduce a schedule for flow flexibility at this stage as such arrangements will not be introduced on day 1 post DN sales. To draft this into licence conditions at this stage assumes the introduction of a particular form of ‘enduring’ arrangements which would pre-judge the outcome of a possible future UNC modification proposal. The exit flow flexibility product is certainly a concept that may form part of the ‘enduring’ offtake arrangements, but is not one that needs to apply to shippers at this stage.

Standard Special Condition A2, B2, D2: Private Collective Licence Modification Procedure

We remain concerned about the complexity of the proposed arrangements for restructuring Transco’s transportation licences. In our view Ofgem’s proposed approach will result in the future new licence change process becoming unnecessarily costly and bureaucratic compared to the current arrangements. This may result in shippers being less able to effectively scrutinise proposals.

One lesson that has been learnt from the review of gas transportation licences as part of the DN sales process is the need to have up to date conformed copies of such licences that are freely available to all interested parties. This will be essential if parties are going to have a realistic chance of effectively scrutinising future proposed changes to gas

transporter licences. **We would therefore urge Ofgem to introduce a new licence condition to oblige gas transporters to publish and regularly update a conformed copy of their gas transportation licences on a suitable website.**

Ofgem continues to believe that it is legitimate to introduce the private CLM procedure pursuant to section 7B(7)(b) of the Gas Act 1995, but continues to be unwilling to disclose the reasons why it believes this is the case. In keeping with openness demonstrated the rest of the consultation document we would again ask Ofgem to explain in detail why it believes it has the powers to introduce the private collective licence condition.

We have also stressed our concern about the potential use of similar 'self modification' powers being applied to other licensed activities, such as generation or electricity distribution. Ofgem is correct in stating that it would not be possible to introduce private CLM procedures into other licences without licensee consent. Nevertheless, this doesn't preclude Ofgem citing precedents (a device successfully used in the past) to justify the implementation of future controversial licence changes.

Standard Special Condition(s) A1, B1, D1: Application / Disapplication of standard conditions and standard special conditions

We will not restate our concerns over these clauses as these have been previously articulated in our responses to earlier licence consultations and the Gas Forum legal view on the Private Collective Licence Modification Procedure.

Standard Special Condition A12: Joint Office Governance Arrangements

Generally we are supportive of the proposed changes. Nevertheless there are a number of points of detail and interpretation that concern us. As stated previously we would have preferred a more arms length arrangement, with complete separation of Joint Office staff from the transportation business – but perhaps that is a debate for another day.

It has been frustrating that despite outline agreement on the Governance and Agency arrangements last summer, Transco's has only recently published its Joint Office Agreement. Some of the elements of this agreement seem to compete with the Modification Rules set out in the UNC. For example the chairman's guidelines following approval of modification 709 should be entirely a matter for the modification rules and not the Joint Office Agreement. In a similar vein the changes to the Joint Governance Agreement and SME Code of Conduct are to be agreed between transporters. In our view, any UNC related matters, including the SME Code of Conduct covered by the Joint Office should be subject to ratification by the Network Code Panel prior to seeking approval from Ofgem. This is important given the new UNC governance arrangements are supposed to be designed to ensure that both shippers and transporters have equal say. It would be inappropriate for transporters to agree such matters without involving shippers in the decision making process.

Standard Special Condition A15: Agency

Ofgem should be commended for the work they have done on this issue. Transparency of agency processes and the licence condition on common services and procedures will in our view provide vital safeguards to avoid inefficient fragmentation of the arrangements. We are particularly pleased with the proposed introduction of a licence condition for the

scope of services and systems within the Agency to be set out in the UNC. Many processes that will be run by xoserve have a critical impact on the quality of service shipper-suppliers can provide to customers and this change provides an essential reference point against which shippers can put forward modifications to the UNC should they be dissatisfied with services and systems provided by xoserve. This change was particularly important in the context of the corporate governance arrangements that are being established for xoserve which ensure that this organisation is clearly run for the benefit of the transporters.

We are also pleased that Ofgem has also recently approved Modification 730 proposed by E.ON UK, "*Extending established Network Code governance arrangements to relevant Transco document*". This explicitly acknowledges the legitimate role of shippers as well as transporters in governing procedural documents related to services and systems managed by Transco alongside the Network Code. Quoting from Ofgem's decision document;

"Ofgem considers that this proposal is reflective, in part, of shipper concerns that have been expressed in relation to DN Sales. During industry discussions at Development and Implementation Steering Group (DISG) and SPA Working Group meetings, shippers identified areas of activity where they were dependent on services provided or co-ordinated by Transco but that were outside of formal Network Code governance. Arrangements based on custom and practice have developed over time, which are acknowledged as having been broadly satisfactory to all parties. However, the prospect of multi-ownership of DNs has brought into question whether changes could be made to the delivery or specification of these services without the consent of shippers; the view was therefore developed within SPA Working Group that more formal governance arrangements were required."

This decision is helpful to shippers who may wish to propose changes to the UNC to formalise governance of other code related procedural documents.

Standard Special Condition A16: Independence of the Independent Market for Balancing

We welcome the additional clarity provided by Ofgem's latest proposals.

Standard Special Condition A17: General Obligations in respect of gas transporters' pipe-line systems

No comments

Standard Special Condition A40: Price Control Review Information

The amendments proposed seem reasonable.

Standard Special Condition A55: Enduring Offtake Arrangements

E.ON UK opposes the best endeavours obligations on transporters to implement the enduring offtake arrangements by 1 September 2005. We consider the use of 'conditional' licence conditions requiring licensee to bring forward proposals to industry codes to be entirely inappropriate and ultimately prejudicial to Authority decisions on such proposals.

The UNC modification procedures are designed to allow users and in some cases customer group representatives to voluntarily bring forward proposal to deal with issues as they arise. Parties should not be 'forced' to bring forward proposals though licence conditions, especially where it is third parties rather than the licensee that are most affected by such proposals. If any user believes the day 1 offtake arrangements are unsatisfactory they will not hesitate to propose a change.

We are particularly concerned that these conditional licence conditions make it impossible for transporters to vote against recommending not to implement any UNC modification to introduce the enduring offtake arrangements. This in itself undermines the validity of any Panel recommendation and should appeals to Authority modification decisions be allowed only where such decisions are contrary to Panel recommendations, it could prejudice parties' rights of appeal.

There remains widespread opposition to Ofgem's proposed enduring offtake arrangements from shippers, consumers and (off the record) transporters. This was clearly articulated in responses to the final impact assessment. At the time of the Authority January 2005 decision the details and implications of the enduring arrangements were not known, and as such the final impact assessment did not fully assess these arrangements. At the time of writing complete details of these proposals have still yet to emerge. It is now not practical to introduce these arrangements by 1 September 2005.

In the light of the above concerns about potentially prejudicing the modifications decision making process, questions as to the merits of the enduring offtake proposals and the implementation date **we would urge the Authority to rethink its support for this new licence condition.**

Special Condition C1: Amendments to Standard Special Conditions relating to LNG

No comments

Special Condition C1A: NTS definition of supply of transportation services

The proposals seem reasonable.

Special Condition C6: Independent Market for Balancing

No comments

Special Condition C7: Charging obligations

See earlier comments on the paramount importance of ensuring all charges are changed only once a year on the 1 October.

Special Condition C19: Undertaking from the Ultimate Controller concerning non discrimination between the NTS transportation activity and the Distribution Network transportation activity

No comments

Special Condition C20: Separation of NTS and Distribution Network Businesses

We do not see the need to strengthen the obligation to "best endeavours", see earlier comments under Amended Standard Condition 39 above.

Special Condition C21: Appointment and duties of the business separation compliance officer

The arrangements seem satisfactory

Standard Special Condition D6: Provision of First Call Emergency Response to the**Operator of the NTS**

No comments

Standard Special Condition D8: Reform of Distribution Network Interruption Arrangement

E.ON UK opposes the implementation of this licence condition. Please refer to our earlier comments with regard to 'conditional' licence conditions potentially prejudicing the modification decision making process.

In regard to the DN interruption licence conditions we believe these should be limited to that which is necessary to facilitate such arrangements on day 1 post DN sales. In our view it is entirely inappropriate to introduce a reasonable endeavours obligation on DNOs to bring forward proposals for implementation of new arrangements by 1 April 2006. The final impact assessment excluded an assessment of the costs and benefits of the offtake and interruptions regime within DNs. Furthermore Ofgem has indicated that such further reforms will be subject to a separate impact assessment. It therefore follows that this further reform should be considered as a stand-alone project and be de-coupled from the main DN sales project, thus making licence obligations mandating licensees to promote further change unnecessary. Certain reforms are either part of the DN sales project or they are not.

We would urge Ofgem remove this unnecessary licence condition. If any party believes the day 1 DN interruption arrangements are unsatisfactory they will not hesitate to propose a change to the arrangements. There is no need for licence changes to 'encourage' parties to bring forward proposals.

Standard Special Condition D10: Provision of Connections Information

We are supportive of the current proposals

Standard Special Condition D11: Charging obligations RDN Special Conditions

See earlier comments on the paramount importance of ensuring all charges are changed only once a year on the 1 October.

Special Condition E10: Separation of NTS and Distribution Network Businesses IDN Special Conditions

We do not see the need to strengthen the obligation to "best endeavours", see earlier comments under Amended Standard Condition 39 above.

Special Condition E11: Amendment to Credit Rating of the Licensee

No comments

Adjustments to the de minimis cap

This proposal should continue to be proposed as it remains our view that SOMSA are likely to persist for some time. There should not be any impediment to permitting such agreements to persist if overall such arrangements represent the most economically efficient option.

Governance of technical standards

This matter may need to be revisited if alternative mechanism for managing technical standards can not be satisfactorily dealt with elsewhere.

Other Licence Issues

It is our view that a new licence condition is required to facilitate the consideration of modification 745 to transform the current Network Code to the Transco short-form code. Please refer to E.ON UK's response to Modification Proposal 745 in Appendix 1 attached which provides a detailed explanation of our views on this matter.

Yours sincerely

Peter Bolitho

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Appendix 1, E.ON UK's response to Modification Proposal 745.