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NGT Potential sale of gas distribution network businesses - Formal consultation under Section 8AA of the Gas Act

Dear Sonia,

RWE npower welcomes the opportunity to respond to the above consultation.

As in the case of our response to the informal consultation, our comments below are limited to various aspects of proposed licence conditions which we believe could, or will, have an adverse impact on our shipping and supply businesses.

Standard Special Condition A11. Network Code

We have previously raised concerns with Suzanne Turner that paragraph 10b and 11b of this condition, and Transco's transposition of these paragraphs into the UNC, could be interpreted as giving "third party participants" the right to raise alternative modification proposals to any modification proposal. We have been assured that this is not the intention, and Transco have added extra wording into the UNC to state that for the avoidance of doubt this is not the case. However, we still believe that to avoid a situation arising where it could be claimed that the UNC is in breach of the licence condition the following amendments, or amendments which would have similar effect, be made.

Amend paragraph 10. (a) (iii) to read "any relevant shipper to the extent they are identified in the network code modification procedures as being entitled to propose a modification"

Amend paragraph 10. (a) (iv) to read "any other relevant person (a "third party participant") to the extent they are identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and"

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Amend paragraph 10. (b) to read “where a modification proposal has been made under paragraph 10(a) (an “original proposal”) as allowed for under the network code modification procedures, alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) of this condition to the extent allowed for under the network code modification procedures.

Amend paragraph 11. (b) to read “where a modification proposal has been made under paragraph 11(a) (an “original proposal”) as allowed for under the network code modification procedures, alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 11(a) of this condition to the extent allowed for under the network code modification procedures.

Standard Special Condition D10. Provision of connection information

Bearing in mind Transco’s poor performance in providing connection services over a number of years it is perhaps not surprising that Ofgem have decided not to increase the overall standards percentage targets and to set the timescales for carrying out standards at the top end of the range.

This being the case we believe that Transco, and each independent DN, should now have no reason not to commit (albeit on an informal basis) to pay compensation to shippers, at an equivalent level as will be payable under the new guaranteed standards legislation Ofgem have stated they intend to introduce shortly, should they fail to meet these standards.

Ofgem have stated previously that they have secured such commitments from Transco and two of the three new DN owners, and we would welcome confirmation that the remaining new DN owner has now given such a commitment.

We note that Ofgem do not consider it appropriate to adopt a “soft landing” approach and assume this is based on assurances they have obtained from DNOs that all the systems and reporting required to efficiently monitor performance under these standards, and payments due under any informal compensation scheme, will be in place from the completion date. We have yet to receive such assurances ourselves, either formally or anecdotally, and remain concerned that shippers will still struggle to measure and reconcile DN connection performance without these.

Standard Special Condition A55. Enduring Offtake Arrangements

We do not believe this new condition is necessary or appropriate and concur fully with the views expressed by the Association of Electricity producers on this condition.

As a consequence of this condition, Transco have already stated publicly that they intend to bring forward an exit modification proposal in May such that changes can be made to the network code in sufficient time to allow for auctions to be held in September/October year.

This is likely to pre-empt any determination of what the initial levels of baseline capacity and flow flexibility will be and what prices are likely to apply to these products. Even if the consultation periods were to run concurrently, shippers would not be able to consider a modification based on a complete understanding of how the whole picture.

In order to be in a position to undertake auctions in September/October Transco will presumably have to start system development imminently, if they have not done so already. Shippers will therefore have no opportunity to influence this and whilst the arrangements may be largely based on those that persist at

entry, which you could argue shippers should have learnt to live with by now, the same cannot be said of DNOs. Also knowing how difficult it is currently to decipher the results of the entry capacity auctions based on information published on Transco's website, if information is presented in a similar way for exit (where there will be considerably more exit points) it will be impossible for shippers/DNOs to obtain a complete picture of the results of the auction and any impact this may have with regard to re-allocation of capacity/flow flexibility by Transco.

In our opinion it would be fairly straightforward to introduce rules that allow for any initial unconstrained auctions to be delayed beyond September and we suggested this in our response to Ofgem's final RIA. To introduce a best endeavours licence condition that forces Transco to introduce auctions in an unrealistic timetable is counter productive, as it will mean that shippers and DNOs will be less likely to participate or bid long term in such auctions as they have not had time to be able to evaluate all the risks, opportunities and issues associated with them.

Bearing in mind the considerable input Ofgem have had in defining and shaping Transco's current thoughts on exit reform, we believe that introducing such a licence condition will fetter Ofgem's discretion in deciding whether to approve Transco's modification proposal against the UNC relevant objectives.

Special Condition C5. Obligations as Regard Charging Methodology

We still remain of the view that charging methodologies should only be subject to change once per year due to the impact such changes may have on invoice charge codes etc which would require shippers and the Agency to make adjustment to their systems. As this principle has been accepted for NTS Exit Capacity, flow flexibility and LDZ charges we believe it should also apply to NTS transportation charges in general.

Standard Special Condition D8. Reform of Distribution Network interruption arrangements

As stated in our response to the final DN sales RIA, and to the initial consultation, we are concerned that introducing such a licence condition will create a momentum for change to be presented within very short lead times (less than 1 year) which will limit shippers opportunities to constructively influence such changes. However, we did state that if it was to be included we believed that the proposed date should be changed to 1st April 2008 (in line with the next price control), as this should allow sufficient time for proposals to be developed collaboratively and for the necessary changes in systems and processes to be undertaken within appropriate lead times.

Whilst conceding that this is a challenging target, we are surprised Ofgem have chosen to ignore our views bearing in mind that we would expect any reform to the DN interruption arrangements to be significantly more complex than the those being imposed at NTS level.

Bearing in mind our experiences of NTS Exit reform, and Ofgem's cost benefit analysis underpinning this, we take little comfort from the statement that "a full cost benefit analysis will be performed in advance of implementing any proposed reforms".

Should you wish to discuss our response in more detail please do not hesitate to contact me

Yours sincerely,

Steve Rose
Economic Regulation