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Ed Gallagher CBE
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23 June 2005

Dear Ms Brown

RIA on Modification 006 (formerly 727): Publication of near real time data at UK sub-terminals.

energywatch welcome the opportunity to respond to Ofgem's RIA. We would also like to thank Ofgem for the work they have put into this document, in particular their review of Transco's contracts which we believe has been most helpful.

energywatch appreciates the Authority's need to consider Ofgem's wider duties when making a decision on this modification. However, we would wish to reiterate, for the record, our continued belief that the modification does better fulfil the "relevant objectives" against which UNC modifications must be considered (see energywatch response to Transco's DMR).

In terms of Ofgem's wider duties, energywatch believes this modification would better protect the interests of customers specifically by facilitating greater market transparency and promoting competition. The legally binding nature of a modification would also better serve the customers' interests than the voluntary DTI scheme.

To be clear, energywatch supports the information release programme under the DTI scheme, but believes that it does not provide the level of information that is needed for players to fully and accurately appreciate the physical position of the network at any time during the day. Furthermore the extensive time lag in providing data means that some players will continue to be privy to important supply information in advance of others. It would not be unreasonable to claim that the DTI scheme does not effectively tackle the information asymmetry between on-shore and off-shore participants. This is especially the case as the scheme is purely voluntary and can be withdrawn without notice and for no reason leaving market participation worse off than under modification 006.

Gas and Electricity Consumer Council

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energywatch would also urge Ofgem to push Transco to implement this modification as soon as possible. With gas prices continuing to rise to unprecedented levels the modification offers an immediate route to increasing competition and levelling the playing field for all wholesale participants. It is our belief that it would greatly assist in ensuring that prices better reflect the supply and demand fundamentals further encouraging market liquidity and predictability. Customers are continually bemoaning the lack of depth in traded markets and the apparent inexplicable price changes experienced in the wholesale market. Confidence in the market will allow customers to enter longer term contracts and require suppliers to apply more focus on quality of service and innovation.

energywatch welcomes Ofgem's request for Transco to produce a full explanation of their proposed timescales. We would note that a communications line takes about 40 days to install (Xoserve lead time for new shippers). Industrial users have also said they would expect no longer than a few months to install suitable meters, so even allowing for availability of engineers a 6 month lead-time would still seem reasonable.

On the "risks" that the RIA identifies energywatch would make the following comments:

Threats to withdraw data – energywatch is concerned by the threats to withdraw data, though those making the threats have exposed the weakness of the DTI scheme. It is our understanding that Transco relies on DFNs for system balancing and this data is not covered by the DTI scheme or the modification. The withdrawal of such data would therefore be wholly unacceptable and suggests that the terminal operators may need regulation in the future to ensure they do provide data that is required for the safe and efficient operation of the system.

Any withdrawal of data will be unreasonable behaviour and as such should be tackled head on. It is important that neither Ofgem nor the DTI are held to ransom by the threats of a few participants when looking to make changes to the market for the benefit of customers, and ultimately the UK economy. Energywatch believes that Ofgem, DTI and HSE will have no choice but to monitor the response of the producers and to use all powers available to them to ensure that such unacceptable threats are not carried out.

Duplicate Metering – energywatch was careful to frame the modification to allow Transco to install all necessary metering such that it owned the meters. There is a financial benefit in using existing meters and any party withholding the right to use the data from Transco (even if it is at a cost) would appear to be abusing their position. Transco should take all reasonable steps to secure the use of third party assets, where they exist, but if new meters are the only way forward the costs will still be significantly lower than the benefits. Transco will also have to show Ofgem that it acted efficiently in procuring meters/metered data if it intends to directly recover the costs.

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Data Accuracy – energywatch notes the concerns about data accuracy, but modern meters have high reliability and market participants will lean to use their judgement in interpreting data, as they do with their own meters. Any delay in the publication of data to allow for some data checking would reduce the impact of the modification. Again we believe there is significant benefit to all players having the same data at the same time, rather than an excessively staggered release. Decisions based on reasonably reliable data will be better than those based on no, or “old” data.

Data Ownership – energywatch believes that Ofgem’s review of Transco’s contractual liabilities shows that the “legal” issues raised by Transco are not a barrier to implementation of the modification. The legacy arrangements, if they are an issue, sound like they should be renegotiated rather than act as a barrier to competition. We hope that all participants are receiving equitable treatment by Transco and are facing the same costs under these legacy agreements as other players.

energywatch recognise that under the UNC, Transco will provide the data on a reasonable endeavours basis, taking all necessary steps to ensure the meters are well serviced, web-site maintained etc.

Legal Text

energywatch would make the following comments on the legal text in Annex 2 of the RIA:

- 5.9.2 (b) it is not for Transco to decide which data is “erroneous”, though they may flag their concerns;
- 5.9.2 (c) Transco should also not decide what is “misleading”, but again they could have a bulletin with any concerns;
- 5.9.2 (d) the modification was specifically designed to get round this point by giving Transco ownership of the meters and the data; and
- 5.9.3 the gas market trades at weekends as well as week days. Transco must therefore keep publishing data daily irrelevant of “non-business days”. Real time meant on all days.

In short energywatch do not feel that the text provided has accurately transposed the modification into legal drafting.

If you wish to discuss any of the points raised in this letter or any other issues associated with the modification please do not hesitate to contact me.

Yours sincerely



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