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27 March 2006

Dear Matt,

Determination under Condition A11(18) of National Grid Gas's Gas Transporter Licence approving amendments to the Interconnection Agreement between National Grid Gas and Interconnection (UK) Limited dated 25 August 1998, and Reasons for making the determination

I refer to your request for a determination approving proposed amendments to the Interconnection Agreement (IA)¹ between NGG and Interconnector (UK) Ltd (IUK) as detailed in the Tenth Letter Agreement which seeks to extend the existing IA for a period of one month.

Paragraph J 6.4.1 of the Uniform Network Code (UNC) specifies that the Transporter (NGG) will not agree with a Connected System Operator (in this case, IUK) to amend any provision of Connected System Exit Point (CSEP) Network Exit Provisions in certain cases except with the approval of each User who is at the relevant time a CSEP User. The exception to this is if the Gas and Electricity Markets Authority (Authority) makes a determination under Condition A11 (18)² of NGG's gas transporter licence, approving such amendment.

Due to practical difficulties in identifying and obtaining approval from each User, NGG has historically requested regulatory approval of any proposed changes to the exit element of the IA under the relevant licence provisions, and has asked the Authority to do so again under Condition A11(18) with the new proposals outlined below.

The current IA is due to expire on 31 March 2006 and NGG's proposed amendments seek an extension of the IA to 30 April 2006.

This letter explains the background to this issue and sets out the Authority's reasons for its decision. This letter also constitutes the notice which is required under section 38A of

¹ The IA is an amalgamation of a Network Entry Agreement and a Network Exit Agreement reflecting the capability of the facility to act as an entry and exit point from the National Transmission System (NTS).

² Standard Special Condition A11 (Network Code and Uniform Network Code).

the Gas Act 1986 of reasons for the Authority's decision in relation to a determination under Condition A11(18), and will be published on Ofgem's³ website.

For the avoidance of doubt, in reaching its decision the Authority is **not** exercising any functions under the Competition Act 1998 or the Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 and is exercising its functions under and by virtue of the Gas Act 1986. Consequently, any decision pursuant to National Grid Gas's application is without prejudice to such powers and to any other approval, exemption or clearance that may be required under either EU or UK competition legislation.

This decision is based on the assumption that the documents and information provided to the Authority are true copies of the originals of the same, are complete and accurate and do not have any misstatements or omissions which may be material to the Authority in considering the application and reaching a decision. Therefore, the Authority reserves the right to rescind or amend any approval given in the event that this assumption should prove to be incorrect or misplaced.

Details of amendments

The IA governs the interface between National Transmission System and the Bacton/Zeebrugge Interconnector. The IA is, in effect, a combined Network Exit Agreement (NEXA) and Network Entry Agreement for the purposes of NGG's Network Code.

National Grid's proposals concentrate on three aspects of the IA:

- (i) all references to "Transco" throughout the IA and the Annexes to the IA shall be replaced with "National Grid Gas";
- (ii) in clause 2.7 the termination date referred to shall be further extended to 1 May 2006; and
- (iii) the amendment previously made to Annex B-2 paragraph 3.3(i) (subsequently renumbered as paragraph 3.2(i)) by the insertion of the words "Hydrocarbon Dewpoint" after the words "as to" shall continue to apply until 1 May 2006.

NGG has separately proposed a number of further, more significant amendments for implementation from 1 May 2006. Ofgem proposes to publish details of these further amendments in an open letter, which will be placed on the Ofgem website. Interested parties will be given two weeks to comment on the proposals to Ofgem. Following this period the Authority will make its determination in respect of these further proposed amendments.

Condition A11(18) of NGG's licence

Under Condition A11(18) of NGG's licence, the Authority is required to consider whether the amendments proposed by NGG comply with the requirement that they are calculated to facilitate the achievement of the relevant objectives, as set out in paragraph 1 (a), (b), (c), (d), (e) and (f) of that Condition.

³ Ofgem is the office of the Authority

The relevant objectives set out in Condition A11(18) are as follows:

- a) the efficient and economic operation of the pipe-line system to which this licence relates;
- b) so far as is consistent with sub-paragraph (a), the co-ordinated, efficient and economical operation of (i) the combined pipe-line system, and/or (ii) the pipe-line system of one or more other relevant gas transporters;
- c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;
- d) so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition:
 - i. between relevant shippers;
 - ii. between relevant suppliers; and/or
 - iii. between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;
- e) so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of standard condition 32A (Security of Supply – Domestic Customers) of the standard conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers; and
- f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.

Determination by the Authority

Ofgem is at present undertaking work in a number of policy areas that could be relevant to the question of NEXAs and their provisions. In that context, developments as a result of any future review of the exit capacity arrangements or the sale of one or more of NGG's retained Distribution Networks could see a more fundamental reassessment of all NEXAs, and this would include the NEXA provisions in the IA.

However, in accordance with its principal objective and general duties, the Authority considers that the continuation of the existing Agreement for a one month period, whilst the Authority consults on further proposed amendments, will continue to facilitate the achievement of relevant objectives and, in particular secure effective competition. The extension period provides certainty to NGG, IUK and users of the interconnector.

In approving the changes to the IA, the Authority, however, would like to draw attention to NGG's obligations under standard special condition A6 (Conduct of Transportation Business) of NGG's licence and its general duty as a gas transporter under section 9(1A) of the Gas Act 1986.

Condition A6 requires, amongst other obligations, that NGG shall not conduct its transportation business in a way that allows any gas shipper or supplier or DN operator

to obtain any unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement. Moreover, under section 9 (1A) of the Gas Act, NGG is under a duty to facilitate competition in the supply of gas and by virtue of section 9(2) of the Act to avoid any undue preference or undue discrimination in specified circumstances.

Thus, in making these changes to the IA, NGG must be aware of and comply with these obligations with respect to other NEXAs to which it is also a signatory.

Condition A11(18) Approval

Therefore, in accordance with Condition A11(18) of NGG's gas transporter licence, the Authority determines that NGG's amendments as set out in the Tenth Letter Agreement are calculated to facilitate the achievement of the relevant objectives set out in Condition A11(1) and the Authority hereby gives approval to the amendments.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Lesley Nugent on 0141 331 6007, Roger Morgan on 020 7901 7346 or Nicola Love on 020 7901 7036.

A handwritten signature in black ink, appearing to read 'Robert Hull', with a horizontal line underneath.

Robert Hull
Director, Transmission