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Our Reference:

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Dear Mark

### **NTS Gas Offtake: proposals for licence modification drafting**

Thank you for the opportunity to comment on Ofgem's proposed licence modification drafting in relation to gas offtake in advance of the publication of Ofgem's informal licence consultation.

Generally, we are concerned that the proposed enduring offtake arrangements and the associated incentives replicate, to a greater or lesser extent, the very complex NTS entry capacity arrangements. The complexity of the NTS price control licence condition has been a cause of some considerable concern for us and we have urged Ofgem on a number of occasions to reconsider its approach and revert where possible to a more simple "traditional" approach to network regulation.

That said, while we are disappointed that Ofgem has not reconsidered its approach to setting complex and detailed NTS entry and exit capacity incentive schemes, we very much welcome the proposal to carve up the existing, single NTS price control licence condition into its various constituent parts. We therefore welcome the proposed approach to replace the existing Special Condition C8B with six new (and shorter) licence conditions.

Turning now to the proposed drafting relating to gas offtake arrangements. At this stage we have not scrutinised the detailed drafting, however, we would like to make the following comments.

#### Special Condition C8B – The NTS transportation owner activity revenue restriction

**Paragraph 2(a). Definition of TOExRt.** It appears that line 4, "and the revenue derived from the licensee in respect of formula year t" has been left in from previous drafting and should be deleted.

## Special Condition C8E: NTS gas exit incentives, costs and revenues

Throughout this condition, reference is made to “supply points, connection system exit points and storage connections points” to indicate the various types of NTS exit points that exist and to which the various obligations apply. If the licence drafting is to name each type of exit point it is essential that in addition to those listed above, “NTS/LDZ Offtake points” should also be included. This would also mean that a definition of NTS/LDZ Offtake point should be inserted into Special Condition C8A. An alternative approach would be to replace the references listed above with a single term that encompasses each category of NTS exit point. For example, it may be possible to use the term “NTS exit point” which is a defined term in the UNC and, we believe includes all categories of NTS exit points. We note that later paragraphs in this condition (see paragraph 3.(b) (ii) refer to “NTS Exit Points”. Clearly, any licence drafting relating to gas exit arrangements must include NTS/LDZ Offtake points.

**Paragraphs 1 (d) (iii) (D).** Capacity release obligation. We believe the requirement to revise baselines upwards should also be applied to instances where the release of additional NTS exit flat capacity has resulted in an increase in the amount of flow flexibility that is available.

**Paragraph 3(d) Request for baseline revision.** It is not clear from this paragraph where the initial baselines set by Ofgem to apply from 1 April 2007 (and yet to be published) will be set out.

It would appear that the statement prepared under paragraph 3(d) is only required following an application for Prevailing Annual NTS Exit (Flat) Capacity to the extent that the licensee intends to alter the baseline. However, the definition of “NTS exit baseline statement” provided in Special Condition C8A states that the initial baselines should be set out in the statement prepared under this paragraph. That is, it appears that the requirements of the statement set out in the drafting of this paragraph is inconsistent with the definition of “NTS exit baseline statement”

However, we also note that NGG’s current consultation on its NTS Exit Capacity Release Methodology Statement has as appendix 2, National, Area and Zonal Maxima. We are therefore confused as to where these initial baselines will be set. That said, we do believe that they should be set out somewhere, either specifically in the licence or alternatively in a statement that is approved by Ofgem. If the latter approach is to be adopted, we believe licence drafting should clearly state where they will be set out. For the avoidance of doubt, in terms of NTS exit flow flexibility capacity baselines these should be set to show the National, Area and Zonal Maxima volumes and robust processes should be in place to govern any proposed changes to the Area and Zonal maxima.

**Paragraph 3 (e)(i). Statement of incremental obligated capacity in the enduring period.** We understand that the purpose of this statement is to provide Ofgem with information relating to investment decisions taken by the NTS. That is, it is in relation to funding arrangements for the release of obligated incremental capacity and is not associated with an “approval” for capacity being made available to either a shipper or a DN that has provided the relevant signal through the allocation process. If our understanding is correct, we believe the November date is acceptable. However, if the statement has any implications for NGG’s subsequent release of/commitment to provide additional capacity to either a shipper or a DN the date should dovetail with the allocation timetable i.e. within 2 months of the application month.

**Other.** We understand from the drafting of Mod 116 that the initial prevailing rights will be set out in a document of some form under the requirements of the UNC. However, we believe there should be an explicit licence requirement to provide this statement well in advance of the first application window next summer and for the NTS to have an obligation to meet the prevailing rights thereafter.

Special Condition C8A: Revenue restriction definitions in respect of the NTS transportation owner activity and NTS system operation activity.

Ofgem has inserted and amended a number of definitions relating to NTS exit flat capacity and NTS exit flow flexibility capacity. However, we note that the definitions of these actual terms are set out in Standard Special Condition A3 and we believe will need to be reviewed in the context of introducing the enduring exit arrangements. Currently, NTS exit flat capacity is defined as having “the meaning given to the term “NTS Offtake (Flat) Capacity” in the network code”. Similarly NTS exit flow flexibility capacity “shall have the meaning given to the term “NTS Offtake (Flexibility) Capacity” in the network code”. This is correct for the transition arrangement however, should mod 116v be implemented, references to these terms within the UNC will change. We therefore believe that the licence drafting for these terms needs to be amended so that they “work” for both the transition and the enduring arrangements.

Standard Special Condition A55 (Enduring Offtake Arrangements)

We agree with Ofgem’s view that this licence condition should be removed from the licence following the implementation of enduring offtake reform.

Special Condition C17 (Exit Code Statement)

We do not believe that it would be appropriate to remove this licence condition following the implementation of the enduring offtake reform. Rather, the condition should be retained until after 30<sup>th</sup> September 2010. This is necessary to ensure that appropriate transparency is maintained throughout the transition period.

We hope that you will find these comments useful.

Yours sincerely

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Director of Regulation