

22 October 2007

Ayesha Uvais
Gas Distribution
Ofgem
9 Millbank
London
SW1P 3GE

Dear Ayesha

GDPCR Initial Licence Drafting Consultation

Please find attached our response to the above consultation. We have structured our response into two appendices. Appendix A contains our responses to the questions raised in the main document. Appendix B contains detailed drafting points on text provided in the supplementary appendix.

We have two major concerns with the present drafting:

- Inclusion of a new obligation under Condition A37 paragraph 3 (b) that requires additional financial information to be provided with the Availability of Resources Statement. This new requirement is implying an inappropriate level of micro management for little actual value to the Authority. It is the assurance of the Board of Directors that is the critical feature of this condition. This new requirement will also require an extensive amount of work to deliver. The new requirement under A37 3 (b) should therefore be deleted.
- Changes to the Business Rates Adjustment in Condition E3 (a). This change which provides a zero allowance post 2010 is placing an unacceptable degree of risk into an area where DN's have at best a very limited ability to influence. The potential for rates to be unfunded would leave the DN unable to finance its functions. The proposed drafting is therefore unacceptable.

In line with the changes made to the electricity distribution licence, the detailed financial reporting requirements are to be set out in the various regulatory instructions and guidance documents (RIGs). The process for the cost reporting RIGs has commenced but the process for the revenue RIGs has not yet commenced. It is essential that completed versions of all the RIGs are available before the formal Section 23 notice is issued in February 2008.

We remain disappointed that Ofgem is refusing to consider the metering obligations at this time. The ongoing investigation into National Grid has no direct bearing on the nature of the last resort obligations on NGN.

I hope you find these comments helpful and if you wish to discuss any of the points raised in this response please do not hesitate to give me a call.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Parker', written in a cursive style.

Stephen Parker
Regulation Manager

Appendix A

Question Responses

Chapter 2

Question 1: Should shippers continue to raise Income Adjusting Events to the exit incentive?

As far as NGN is aware this provision has never been used in respect of distribution activities and it is difficult to see how it would ever be used. We consider that an income adjusting event (currently defined as force majeure or national gas emergency) is extremely unlikely to reduce distribution costs. We do not believe it is necessary or appropriate for shippers to have this right.

Question 2: How should an IAE associated with TMA costs be constrained without limiting costs to permit costs?

The ongoing costs associated with TMA will include:

- Permit costs
- Fixed penalty notices
- S74 overrun charges
- Inspections

In addition, the legislation will require IS changes and additional FTE's to administer the increased notices. In the current GDPCR proposals Ofgem has not made any specific allowances for ongoing or set up costs associated with TMA. Therefore the IAE should not be constrained to permit costs but encompass all of the costs associated with TMA.

Question 3: Are there any other changes to SC Part E that are necessary to make the GDPCR effective?

We have no further suggestions. The current drafting only reflects the Initial proposals obviously further updating is required following the Updated and Final proposals.

Question 4: Are there any changes to SC Part E that are inappropriate?

There is one change which is inappropriate - E3 (a) Business Rates Adjustment. This change which provides a zero allowance post 2010 is placing an unacceptable degree of risk into an area where DN's have at best a very limited ability to influence. The potential for rates to be unfunded would leave the DN unable to finance its functions. The proposed drafting is therefore unacceptable.

The base allowed level of rates for 2010/11 should be the previous year rates costs not zero. The reasonable endeavours test Ofgem is seeking to impose should be applied to any increase to the 2009/10 costs.

Much greater clarity needs to be provided in the licence of the process, timetable and definition of reasonable endeavours. The earliest point at which NGN is likely to see the preliminary valuation is June 2009 and there is no certainty as to when the process will be concluded. If the process with the valuation does not conclude until close to 31 March 2010 what would then happen?

Under the current process, any changes to transportation charges prices are set by 2nd August. At that point in 2010 it is highly unlikely the valuation and the Ofgem approval process completed. On what basis would prices then be set?

Question 5: Are there any other changes to SC Part E that are desirable but not necessarily associated with GDP/CR?

We have no suggestions at this stage.

Chapter 3

Question 1: Are our proposed changes to SSC in Part A and D appropriate?

The change to A37 to require new financial information to be provided with the Availability of Resources Statement is inappropriate and not supported by NGN. These new requirements are implying an inappropriate level of micro management for little actual value to the Authority. It is the assurance of the Board of Directors that is the critical feature of this condition. These requirements will also require an extensive amount of work to deliver. The new requirement under A37 3 (b) should therefore be deleted.

NGN remains concerned with the absolute nature of the requirement to achieve the gas escape standard as proposed in Condition D10. The condition should contain an exceptional circumstances provision which would require Ofgem consent. This would avoid a company being in automatic licence breach due to exceptional circumstances beyond its control.

Question 2: Is the information provided by the GDNs under SSC D5 - licensee's procurement and use of system management services, useful? Is there any specific additional information that GDNs can provide to increase transparency in the use of their constraint management tools?

We support the proposal to remove the procurement of shrinkage gas from this condition and provide flexibility regarding the undertaking of the audit.

The remainder of the condition was drafted to meet the requirements for disclosure at the NTS rather than the DN level. Currently we see little value in the information that we provide and the level of response to the various consultations required under this condition would indicate that shippers see little value. We believe the whole of this condition can be removed and when the new exit and interruption arrangements are finalised appropriate reporting requirements can be incorporated as part of those arrangements. If Ofgem is not minded to remove these requirements, we would like to understand the value of the reports since GDN sale to both Ofgem and the shippers.

Question 3: Is it appropriate to remove D7 - exit code statement? If so why?

It is appropriate to remove this condition particularly for the IDNs. Ofgem will obtain any required cost and revenue information from the cost and revenue reporting rigs.

Question 4: How should the scope of A40 - Price Control information, be defined to capture information from non-GDN affiliates or related undertakings?

We do not believe it is possible to construct a generic licence condition and Ofgem should approach each situation on a case by case basis. The one existing example of this is NGN where there have been no issues with the provision or release of information through the price control process. There are several areas of the licence where Ofgem could take action if a company was unable or unwilling to provide required information for the price control.

Question 5: Do respondents believe that the powers of the Authority should be similar to those that exist in respect of connection charges on other categories of gas and electricity network?

We are not aware of any issues relating to connection charging methodology and it is noticeable that competition has developed extensively in certain areas of the gas connections market. It appears this change is being proposed simply for consistency rather than to address any specific problem.

We are unclear whether the proviso added to paragraph 5 (c) of Condition 4 B is sufficient to implement the Initial proposals regarding the competitive sector of the market. The general drafting of this condition needs further work to have consistent style and clarify the understanding.

Question 6: Do respondents believe that the need to consult prior to amending the charging methodology is unduly onerous?

The majority of connections work is undertaken for individual one-off domestic customers so we see little value in a consultation exercise.

Chapter 4

Question 1: Is the timetable set out in this chapter appropriate?

The proposed timetable seems reasonable. It is essential that completed versions of all the RIGs are available before the formal Section 23 notice is issued in February 2008.

Appendix B

Drafting Points

Page Number	Reference	Comment
17	Definition of MP_t	Third line has superfluous square bracket.
19	Definition of PDA _t	The definition of Distribution Network Pension Deficit Charge is missing.
25	Definition of included mains and service	Add after pressures “and comprised of non-standard mains materials”. Change last part to services which are “decommissioned and replaced”.
25	E5 Para 3	Formula does not work as it uses actual costs (E_t) which are already taken into account in the allowance incentive annual calculation. The cap is looking at overall volumes and therefore should look at the sum of AM_t over the five years compared to the original allowances to isolate the volume variances using consistent unit costs.
27	Definition of domestic premises	A definition of non-domestic premises should be added.
27	Definition of Domestic Services re-laid	The term re-laid could be confusing. Domestic services replaced would be a clearer definition.
27	Definition of Domestic Services re-laid and Services Transferred	Add to both definitions “including the associated purge and relight”.
27	Definition of non-domestic services re-laid	Definition is incorrect it should be re-named as non-domestic services re-laid and a separate definition added of non-domestic services transferred added as per the definitions for domestic services.
28	Annex G	The graduations are not precisely defined. What happens to a 3.5 inch main for example? Would be clearer to define precise range rather than leaving gaps.
30	Definition of ExLIC _t	Definition is incorrect DNs do not pay the NTS for plus 15 days curtailments such payments are made to shippers.
44	E7 Para 3	The previous drafting stipulated an amount for the adjustment. This seems reasonable if the shipper is requesting an IAE and should be reinstated if this right is retained.
45	E7 Para 10 (a)	Base revenue needs to defined or referred to the formula term Z_t
57	E11 Para 3 (b)	Where relevant can be deleted. “Metering business activities”

		would be clearer drafting than metering activities.
59	E12 Para 4	The recovery of costs associated with standard condition 7 (gas illegally taken) has been omitted and should be added back as per E4 para 3c of existing licence
60	E12 Para 4 (c)	Definition of user pays services is required
62	E13 Para 4	Why is a different definition of RPI being used? It would be better to use the standard RPI calculation form the main control term.
66	E14 Para 2 (b)	Second line replace E3 with E2
68	E14 Para 7 (c)	We do not understand this requirement. It does not appear to relate to any existing requirement.
74	A15 Para 11	Provision to allow for a reasonable margin should be added given that no cost allowances are provided for such services. DN's are exposed if the take up of such services is low.
85 – 95	A30	References to Companies Act need updating but having regard to the timing of the introduction of the relevant parts of the Companies Act 2006 relevant to the licence changes.
92	A30 Para 16 (c)	Further to previous point, noted that the amendment changes reference to CA 2006 but rest of sentence still refers to CA1985
94	A30 Para 19	Reference to “paragraphs 18 and 19” should be “17 and 18”. Also references to “21 to 23” should be “20 to 22” and “22 and 23” should be “20 and 21”.
95	A30 Para 20 (d)	Delete “of these” and “s” from “areas” and add “paragraph 20 (a) to 20 (c)” so the sentence reads “information about policies of the licensee in each area mentioned in paragraph 20 (a) to 20(c) and the information .. etc”
95	A30 Para 23	Reference to paragraphs “18 and 19” should be paragraphs “17 and 18”
103	A35 Para 3	Reference to “E2A” should be changed to “E1”
109	A37 Para 3 (b)	This new requirement should be deleted. It will require a significant amount of work to deliver and for little value to the Authority. The nature of the assurance provide in paragraph 2 is comprehensive and backed by a formal Board resolution. This new requirement implies a level of micro management and we question how Ofgem would use such information.
121	A40 Para 3 (a)	References to Companies Act need updating
133	D7 Para 1	Bracket missing after “may direct in writing” on first line. Also “subsequent” requires deleting on second line.
162	4B Para 11 &12	These requirements do not relate to connection charging methodology and should sit in a stand alone condition

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