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Our Ref: AHT/MB/GDPCR FP_2nd LD NGGT response

Dear Ayesha

National Grid Gas plc Transmission response to GPDCR: Second Licence Drafting Consultation (290/07)

This is the response of National Grid Gas's transmission business (referred to in this letter as "National Grid Gas Transmission") to the above consultation. We also include, where appropriate, references to the GDPCR Final Proposals document (285/07). Our response is not confidential and we are happy for it to be published by Ofgem.

For ease of reference, we have structured our response in line with the questions raised in the consultation document. We enclose a change marked version of the licence drafting which includes further specific drafting comments and our proposed amendments.

We note Ofgem's request in paragraph 1.17 of the second licence drafting consultation document that National Grid Gas Transmission indicate whether they are minded to consent to the drafting published. We note that Ofgem's consultation specifically reserves its position on some licence conditions. In this light, we are only in a position to provide an indication that we would be prepared to consent (or not object, as appropriate) to the published drafting if the issues raised in this response and the attached marked-up versions of the drafting incorporating our comments are addressed by Ofgem in a manner which is acceptable to us and on the basis that a satisfactory outcome is reached in relation to the matters on which Ofgem has reserved its position.

General Issues

We note that Ofgem consider that the word "must" should be used in place of the word "shall" in the creation of obligations. We consider that this creates inconsistency in the style of drafting across the licences taken as a whole which should be avoided; it may be that this change would be appropriate for any thorough review of the licences undertaken in due course.

Second Licence Drafting Consultation: Chapter Two

Question 2: Are our proposed changes to SC Part E appropriate?

Distribution Network Pension Deficit Charge (E3)

National Grid Gas Transmission had some concerns over the proposals for the DN pension deficit charge, as the methodology for recovering the charge appeared to create a discrepancy between the charge from NTS to the DN and the amount to be recovered by the DNs.

We note that in the second licence drafting consultation, Ofgem has produced drafting which explicitly deals with any divergence of actual charges from the NTS to the DN and we are therefore satisfied that our concerns in this area have been allayed.

Capacity outputs incentive (E6)

In our response to the Updated Proposals and the separate Capacity Outputs Incentive consultations, we raised concerns over Ofgem's proposal not to incentivise GDNs' bookings of NTS flex capacity and the potential for this approach to lead to constraints on the NTS which could disadvantage other NTS users. We note that Ofgem has explicitly removed the incentive on NTS flex capacity bookings in the enduring period, hence has effectively made the cost of NTS flex capacity a "pass through term". We note that Ofgem propose the introduction of a mechanism whereby any increase in a GDN's booking of flex capacity of greater than 10% per annum would attract Ofgem scrutiny, but we again question the derivation of the 10% threshold and indeed whether such a mechanism provides a strong enough incentive to DNs to not overbook on the NTS.

Second Licence Drafting Consultation: Chapter Three

Question 2: Is it appropriate to move some or all of the conditions in Standard Special Conditions (SSC) A19-22 to the SSCs in Part D? If so, why?

In our response to the Updated Proposals and Initial Licence Drafting consultations, we considered that the provisions of SSC A19 to A22 were placed in Section A in error at the time of network sales and that the provisions were of no relevance to the NTS licensee and should not bind it. We continue to believe that the obligations in these conditions are really directed at transporters' dealings with domestic and small industrial/commercial consumers. They do not appear to have any relevance to the activities of the NTS, because NTS staff will not require entry to such premises; for example, even in the event of an incident on the NTS which led to the need to contact domestic consumers, this work would be done by the relevant Distribution Network Operator under the arrangements put in place pursuant to SSC D6 (Provision of first call emergency response to the NTS operator). As a result, we consider that all these conditions should be moved to Part D of the licence.

Question 3: Are our proposed changes outlined in this chapter and set out in detail in the appendices appropriate?

We have set out our comments on individual SSCs below. We attach a draft of SSCs A15, A30, A34, A35, A37 and A40, marked-up against Ofgem's draft. We also enclose change marked drafts of Standard Condition 4B and the proposed licence drafting for Independent Systems.

SSC A15 Agency Services

We note that since publication of the second licence drafting consultation, Ofgem has published a separate consultation on the National Grid NTS price control allowance for xoserve. National Grid Gas Transmission will be responding to this consultation separately within the relevant timescales.

We welcome Ofgem's revised licence drafting that removes the requirement for the scope of user pays services to be defined within SSC A15, to avoid the need to amend SSC A15 in the event that user pays services change in future.

We have included further detailed comments in the enclosed change marked version of SSC A15, but wish to highlight an amendment to paragraph 3 of SSC A15 to remove the wording "(save in respect of user pays services)" as some of the services will continue to be set out in the Uniform Network Code.

SSC A30 Regulatory Accounts

Ofgem have stated that they consider that the references to the Companies Act in SSC A30 are robust. However, we consider that the reference to section 417 of the 2006 Act should be a reference to sections 415 to 417. Furthermore, while the other references to the 1985 Act are to sections that will still be in force on 1 April 2008, the effect of The Companies Act (commencement No.5, Transitional Provisions and Savings) Order 2007 (S.I No. 2007/3495) will be to effect the Companies Act changes on 6 April 2008 (as referenced in the table below). As such, it appears to be unreasonable for Ofgem not to take the opportunity to update the references to the 1985 Act to

references to the 2006 Act and to include a paragraph deeming them to be in force (as was previously done in relation to the changes to the 1985 Act implemented by the 1989 Act – see, for example, paragraph 13 of the existing SSC A30). If this opportunity is not taken, the amended conditions will only be up-to-date for 6 days, after which they will need to be construed to refer to the 2006 Act, which appears less than satisfactory.

Table: SSC A30 – references to Companies Act 1985/2006

A30 Reference	Old ref	New ref
Part A Para 2 (b)	226, 226A, 226B	394,396,397
Part B Para 4 (a)	222 (5) (b)	388 (4) (b)
Part B Para 7	226	394
Part C Para 8 (a) (i)	226A	396
Part C Para 9	226B	397
Part E Para 17 (c)	234	415
Part E Para 17 (e)	262	385

SSC A34 & A37

We have provided a change marked version of these SSCs for minor comments.

SSC A35 Prohibition of cross-subsidies

In relation to SSC A35, we note that the drafting continues to refer to the obligation in Article 17 of Directive 2003/55/EC: we would reiterate our view that this approach is illogical and incorrect for the following reasons. As we have pointed out before, it is the nature of Directives that they create obligations for member States that the Member States implement through their national legislative regimes. Paragraph 1 of SSC A35 does precisely this, translating the obligation not to give or receive a cross-subsidy into a form directly binding on the licensees. As a result, this condition should not refer back to the Directive as such an approach is erroneous (the directive not creating obligations for licensees directly) and confusing (the specific provision of the Directive referred to applying to more than just cross-subsidies).

SSC A40 Price Control Review Information

We welcome Ofgem’s acceptance of our suggestion that the same corporate governance requirement be inserted into the wording of SSC A40 as that which was inserted into SSC A40 of National Grid Gas’s gas transporter licence in respect of the NTS by Special Condition C1B (Amendments to SSCs A37 (Availability of Resources) and A40 (Price Control Review Information)), effective from 1 April 2007. We have provided some comments on the specific drafting in the enclosed change marked version of SSC A40.

SC4B Connection Charging Methodology

Please see the enclosed change marked Standard Condition 4B for our detailed comments on Ofgem’s proposed licence drafting.

We support Ofgem’s revision of the drafting of paragraph 9(b) which addresses the concerns we raised in response to the Initial Licence Drafting consultation that it would not be possible for National Grid Gas Transmission to produce a statement which fulfilled the licence requirement as it was originally drafted.

Furthermore, as requested by Ofgem, we have provided a draft Connection Charging Methodology to Ofgem, in line with the requirements of the proposed licence drafting.

Gas (Standards of Performance) Regulations (“GSOP Regulations”)

We note that at the time of publication of the second licence drafting consultation, the GSOP Regulations were still under consultation and that Ofgem proposed a statutory consultation on the statutory instrument (SI) in January 2008, with a deadline for responses in February 2008.

We responded to both the Updated Proposals and the separate GSOP Regulations consultations with concerns over the change in policy for the supply restoration standard caused by third party damage

and water ingress interruptions, with regard to the consequential impact on National Grid Gas Transmission. We look forward to reviewing the outcome of the second consultation on the SI and receiving clarity on the proposals for the associated Standard Condition 20.

Independent Systems

We are concerned that the drafting that Ofgem has proposed to deal with the independent systems is inadequate. In particular, many of the required terms are not defined, those definitions which are used are not consistent with the rest of the licences and there is no consistency over the identity of who calculates the Bulk Price Differential (NTS or DNs) or whose calculation should form the basis of the payments. These conditions will need considerable additional work before they can be the proper subject of a statutory consultation. We have enclosed a change marked version of the drafting with our detailed comments and proposed amendments and would be happy to discuss these with you prior to the statutory consultation.

Should you wish to discuss any of the issues raised in our response, please do not hesitate to contact me or Alex Thomason on 01926 656379.

Yours sincerely

Mark Brackley
Regulatory Frameworks Manager – Gas

Cc: Mark Cox, Ofgem
Indra Thillainathan, Ofgem

Enc: National Grid Gas Transmission change marked versions of proposed licence drafting for Part A SSCs, SC4B and new licence conditions for independent systems