

14 January 2008

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Ofgem  
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London  
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Dear Ayesha

**GDPCR Second Licence Drafting Consultation**

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

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 on 07883 099609.

Yours sincerely



**Stephen Parker**  
Regulation Manager

## Appendix A

### Question Responses

#### **CHAPTER: Two**

**Question 1:** *Is it appropriate to include a provision in SC E7 which enables the Authority to determine on TMA costs that are not already covered by the provisions of the re-opener?*

#### **Response**

It is appropriate to include a provision in E7 to determine on costs other than permits, fixed penalty notices (FPNs) and ongoing administration. There are three other areas where we believe the new legislation will impact upon our costs:

- Inspections. The TMA proposes for permit schemes a 100% inspection regime is implemented. The utility has to pay for the inspections so this will have a direct cost impact. There are also charges levied for any defects discovered on the inspections. With a 100% inspection regime the level of defect payments would be expected to rise.
- Section 74 over run charges will still remain and operate in conjunction with the new permits and FPNs. However, it is proposed to increase the charges presently applied for S74 over run.
- Greater powers for highway authorities to direct when, where and how work will be carried out

There are still significant uncertainties surrounding the detailed implementation of TMA so there may well be other areas of costs which are not yet fully understood.

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

#### **Response**

As set out in Appendix B there are a number of detailed areas where drafting changes need to be made. In general NGN has no fundamental concerns with the changes being made to Part E.

#### **CHAPTER: Three**

**Question 1:** *Are our proposals to consolidate obligations in relation to codes of practice and vulnerable customers appropriate? In particular, do our proposed changes maintain adequate protection for vulnerable customers? Please give reasons for your answers.*

#### **Response**

The proposals to consolidate obligations in relation to codes of practice and vulnerable customers are appropriate and maintain adequate protection for vulnerable customers. The proposed changes do not weaken the obligations on gas transporters and provide the same level of protection as under the current licence.

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

### **Response**

These obligations are not relevant to the NTS who do not have domestic or vulnerable customers directly connected to their network. Therefore we support moving these obligations into Part D of the licence.

The reporting obligations in A22 should be incorporated into D9 along with the other quality of service reporting requirements. The detailed requirements could then be included into the quality of service RIGs rather than the separate process implied by the current drafting of paragraph 3. This will ensure change control provisions are applied to any new or amended requirements.

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

### **Response**

The proposed change to A37 to require a new cash flow forecast, movement in net debt and analysis of net debt is significantly more onerous than the statement of working capital previously required and will not provide additional value to Ofgem. In neither this document nor the previous licence document has Ofgem set out the reasons for wanting to increase regulatory requirements in this area. As far as we are aware there is no evidence that any issues have been identified by Ofgem in relation to the assurance provided by directors of licensee companies under this condition.

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 require an extensive amount of work for NGN to deliver which will ultimately increase costs for customers. The new requirement under A37 3 (b) should therefore be deleted.

Our key concern with the inclusion of the emergency standard within condition D10 remains its absolute nature which means that in ANY circumstance where the 97% is not met the licensee is in breach of its licence. We fail to see why the inclusion of an exceptional circumstances exemption which requires a specific consent from the Authority would in any way diminish the obligation or the ability to take enforcement action.

We note that no changes have been made to D5 (System Management Services) and D7 (Exit code statement) in this draft and that both conditions are still under review. NGN believes that both D5 and D7 add little value and can be removed from the licence given the new offtake and interruption regimes.

Ofgem has in various places used the term “take all reasonable steps” following on from the use of this term within the revised electricity distribution licence. It is not clear whether this term will have the same legal interpretation as “use reasonable endeavours” which has a significant amount of case law behind it. The proposed licence will now use both these terms. We believe a consistent term should be used throughout and that this should be “use reasonable endeavours”. After completing the price review licence modifications NGN would support a transporter licence review similar to that undertaken in electricity distribution where this change could be considered.

Appendix B

Drafting Points

<b>Standard Licence Conditions</b>		
Page	Reference	Comment
37 (Appendix B)	4B 6 (a)	We note Ofgem’s comments regarding the relative competitiveness between gas and electricity but this is at odds with Ofgem’s own industry survey data which clearly shows gas connections are more competitive across the board. The area of the market where competition is unlikely to develop in gas is one off domestic connections to existing premises given the 10mt rule and increasing NSWRA requirements. It is not clear who relevant parties would be for this class of customer and whether any practical benefit would come from the consultation process proposed. We believe this process is unnecessary bureaucracy which will add no value and should be deleted from the proposed licence condition.
38	4B 3	Licence condition should reflect the final proposals with regard to network extensions for fuel poor communities by adding at “(g) where a connection requires extension of the network to facilitate the supply of gas to a non-gas community falling within the 20% most deprived areas according the Governments Index of Multiple Deprivation, the charges for supplying and laying a pipe or main that would apply to such connections.”
<b>Standard Special Licence Conditions (Part A)</b>		
Page (Appendix 12)	Reference	Comment
3	A15 12	Definition of core services and user pays services are circular with A15 7 (a) and therefore meaningless. Core services means “those services which are charged as part of the DN’s transportation charges and are set out and described in the statement prepared in accordance..... “. User pays services could then be defined as “those services other than core services which are set and described .....
4	A15 11	The process to set charges is a joint one therefore after “licensee” should be added “together with the other relevant transporters”.
8	A22	This condition should be incorporated into D9 in line with the rest of the quality of service reporting requirements.
41	A40 5	After all in first line add “reasonable”.

<b>Standard Special Conditions (Part D)</b>		
Page (Appendix 14)	Reference	Comment
1	D9 1 (b)	This paragraph is out of date. There is no intention to have a single incentive scheme as was this case when this was originally drafted. The primary purpose of the condition is for the reporting of information in relation to the licensee's quality of service and other performance data. The title of the condition should also be updated.
<b>Special Conditions (Part E)</b>		
Page (Appendix 15)	Reference	Comment
2	Definition of DN Prescribed rates	Current definition is ambiguous with regard to the treatment of metering. IDN's did not acquire meters as part of the sale so the vast majority of the meters attached to their networks are owned by third party MAM's. Rates will be charged to the network owner for all meters attached to their network. The last phrase of the definition should make this clear. We suggest deleting "including (where relevant) metering" and replacing with "plus any charge for meters attached to the licensee's Distribution Network ."
3	Definition of DN Transportation Activity Revenue Restriction Conditions	After "to" add "and including"
13	E2 Annex A	The revenue listed here is £40k per annum lower than what is in the Final Proposals (and Ofgem's Financial Model). NGN expected a small reduction for Independent Systems, but not as high as £40k. In addition, the Final Proposals imply a total 5 year impact of £0.1 (rounded) due to independent systems and the £40k per annum would mean a minimum of £0.2m. I.e. we believe the licence condition is too low.
15	E3 3 (a)	RBA <sub>t</sub> should simply be the Distribution Network Prescribed Rates for the year t. This is a defined term so no need to repeat the definition here.
16	E3 3 (b) (ii)	At end "prescribed rates" should be in capitals.
17	E3 5	Definition of PDE(t). Refers to 'Table 3' in Annex D. There is only one table in the Annex so the reference to Table 3 should be

		removed.
20	E4 2	In definition of Rt-1 DN transportation activity revenue should be in capitals.
22	E5 1	DN transportation activity revenue should be in capitals.
22	E5 2	Definition of AMt should refer to paragraph 3 not 4.
23	E5 2	In definition of included mains and services after “all decommissioned” add “,transferred”
31	E6 1	DN transportation activity revenue should be in capitals.
31	E6 2 ExIIC <sub>t</sub>	Plus 15 day curtailment payments are made to shippers not the NTS operator. This definition needs to be amended to reflect this.
31	E6 1	Description of this condition and in fact the title is slightly misleading as they refer only to the exit capacity incentive and not to the interruption incentive which is separate and distinct.
32	E6 2	The definition of ExCt should be simplified. There is no need to separately define ExCCt and ExFFCt. These terms are only used in this definition.
44	E6 18	There is an error in the formula for IIt. IA(t) term is stated in £m in Annex M, whereas the IOC(t) term is defined as being in £ and the IEC(t) term has an unclear unit of measure. Need either to restate the IA(t) term into £ or change the formula.
49	E7 2	Should say paragraph 12 rather than paragraphs 12 in definition of ITLt
50	E7 3	Should say paragraph 2 rather than paragraphs 2 in first sentence.
54	E7 15 (b)	Delete “by” from this sentence
55	E7 17 (b)	Change “An” to “A”
56	E7 22 ( c)	This provision effectively disallows all claims where the Authority requests additional information. This is unreasonable. A more reasonable approach would be if the Authority has issued a request for additional information under paragraph 18 and has not received a response within a reasonable time period or has received a response and is still of the opinion that information is insufficient. This could be achieved by deleting the references to paragraphs 6,10,15 from this condition and adding at the end “or the Authority has not received a response to a request under paragraph 18 within a reasonable time period.”
63	E8 Annex O	Heading inside the table should be Shrinkage Volume (GWh)
64	E9	Rather than have separate RIGs for the leakage model requirements should be included in the revenue RIGs under E20.
66	E9 4	In last sentence delete “revenue reporting” and replace with

		"leakage model" for consistency with rest of condition
71	E12 2	Main formula is missing.
77	E8 5	<p>The definitions of Wdy and Wed are not clear as to what happens with bank holidays and would benefit from specifically referencing the forward offer price. We suggest the following to deal with these issues:</p> <p>Wdy means the last available Closing Day Ahead Forward Offer Price before the relevant day d published in an Approved Market Price Report for delivery at the National Balancing Point. Wdy will apply to those days that are defined as Weekdays.</p> <p><i>Definition: Weekday: Those days that are neither a weekend (Saturday and Sunday) nor a prescribed Bank Holiday in England &amp; Wales.</i></p> <p>Wed means the last available Closing Weekend Forward Offer Price before the relevant day d published in an Approved Market Price Report for delivery at the National Balancing Point. Wed will apply to those days that are defined as Weekends.</p> <p><i>Definition: Weekend: Those days that are a Saturday and Sunday and a prescribed Bank Holiday in England &amp; Wales.</i></p>
81	E17 1	DN transportation activity revenue should be in capitals.
84	E18 1	DN transportation activity revenue should be in capitals.