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26<sup>th</sup> June 2009

Dear Mark,

### **The “timing-out” of code modification proposals**

Thank you for the opportunity to comment on your open letter published 13 May 2009 that set out Ofgem’s proposals for the “timing-out” of code modifications. This response reflects the views of Wales & West Utilities Ltd and we are responding in our role as a Gas Distribution Network (GDN) that is party to the Uniform Network Code (UNC). Our comments are made predominately in relation to the UNC unless otherwise stated.

We have set out in our response our comments on the issues raised in your open letter, our views on the 3 options and have given comments on the proposed changes to Standard Special Condition A11 of our gas transporter licence.

### **Flexibility to address problems early in the process**

We agree with the respondents to the November 2008 consultation that stated Ofgem can already influence the implementation timescale of a modification proposal. The majority of UNC modification proposals are discussed within industry meetings and specifically by the modification panel. The development and implementation timescales are often included within the modification proposal and the suitability of them discussed (although they are not binding).

If at anytime during the process the proposer, a Code party, or Ofgem have concerns about meeting the suggested timescales there is the opportunity to address this. Issues are often resolved by either amending the proposed timescales or, where this is not possible, additional ad-hoc workgroup or modification panel meetings can be arranged. We believe that the current UNC modification rules are sufficiently flexible to address problems early on in the process.

### **Incentives on the Authority to make timely decisions**

As the UNC modification process does not have decision by dates, or have set implementation dates for modification proposals, we do not believe it would be appropriate, or possible, to give the Authority extra powers in this area. We also recognise that the Authority does have a Key Performance Indicator for making modification proposal decisions and believe that this is a sufficient measure. The Authority has recently begun to publish indicative timescales for making modification proposal decisions. We welcome this initiative

24 hour gas escape number  
Rhif 24 awr os bydd nwy yn gollwng

**0800 111 999\***

\*calls will be recorded and may be monitored  
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as we believe it adds a degree of additional transparency and efficiency to the modification process.

### **Increased regulatory risk and uncertainty**

Although a number of respondents to the previous consultation had concerns in this area we do not believe it to be such an issue. A UNC modification proposal does not contain a set implementation date (unless the date forms part of the legal text) and we do not believe this presents any code party with significant regulatory risk or uncertainty. Implementation dates are notified by the Transporters and a number of factors are taken into account when formulating such dates.

Where a change has system implications for the Transporters (e.g. UK Link) or for a User (shipper) then the development and implementation of such changes need to be considered. For UK Link related changes the modification proposal will be discussed by the UK Link Committee and, in most cases, a decision on implementation is agreed upon.

Where a modification proposal has no impact on systems, and is not related to a date specific event, the implementation date will usually be within a matter of days following the direction from the Authority to implement the modification proposal.

The Uniform Network Code Committee (UNCC) meets on a monthly basis and has a standing agenda item “implementation matters”. Any issues arising in relation to implementation dates can be discussed at this meeting in an attempt to find a suitable resolution. Although they are not a committee member, the Authority is invited to, and participates in, each UNCC meeting. This is an opportunity for the Authority to provide any necessary guidance whilst also providing comfort to code parties that any concerns are addressed and thus reducing the potential for regulatory risk.

### ***The validity of the industry analysis***

The occasions where Authority decisions on modification proposals take an excessive period of time are very rare. We therefore do not believe this is of great concern in relation to the UNC. If industry analysis does need to be re-assessed we do not believe that this would create a significant burden on the industry and is unavoidable if the decision to be taken by the Authority is reliant upon it.

### ***Previous Authority decision on modification proposal P93***

As this relates to a BSC modification proposal we have no additional comments to make on this.

### ***Consultation***

As the UNC modification process does not utilise the concept of decision dates we do not believe this is, currently, an issue for UNC parties.

### ***Interaction with the Codes Governance Review***

We have concerns that this matter appears to be being progressed in isolation to the Codes Governance Review (CGR) proposals for “sending-back” and “calling-in” modification proposals. As the issue around “timing-out” is not currently a ‘gas’ related issue we have

concerns that the proposed licence changes contained within your letter will not have fully been considered by UNC parties. If there is the potential for further proposed changes to SSC A11 as a result of the CGR then it would seem more sensible to progress these as a single consultation.

### ***Ofgem's proposals – Options A, B & C***

As we have set out above, the concept of “timing-out” does not exist within the UNC modification process. We do not see that any of the 3 options that you have set out in your letter are appropriate for inclusion within the UNC.

For information, the process for establishing Implementation Dates (the date from which a modification becomes effective) is set out within paragraph 9.7 of the UNC Modification Rules (as set out below).

#### *9.7 Modification*

- 9.7.1 *The Transporters shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code in accordance with each consent given and each direction made by the Authority.*
- 9.7.2 *The Transporters shall, as soon as reasonably practicable, notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) of each Modification. Each such notice shall specify the text of the Modification and the date upon which the Modification shall become effective and may provide (for the purposes of information only) an explanatory note (which note should not be relied upon) in respect of the Modification. Each Modification shall become effective upon the date specified in the relevant notice. Having so notified each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any), the Transporters may, with the agreement of the Authority, notify all Users, all Transporters, Members, each Third Party Participant and Non-Code Parties (if any) of any amendment to the date specified in the earlier notice, and the date specified in any such notice shall be the date upon which the relevant Modification shall become effective.*

These rules set out the process for the Transporters to notify industry participants **after** a direction has been given by the Authority. It also allows for an implementation date to be amended, subject to the agreement of the Authority, if necessary. We believe these arrangements offer the appropriate level of governance for implementation dates and should not be altered without suitable discussion and consultation within the UNC framework.

We would also like to raise our concern that this “timing-out” issue has been considered across the BSC, CUSC and UNC without much consideration for the differences in the current arrangements. We appreciate that it can be advantageous to have consistent arrangements across certain codes but this should only be when it is appropriately justified.

We are also concerned that when considering such matters that Ofgem have chosen to ignore the iGT UNC and the corresponding Standard Licence Condition 9 of the gas transporters licence. In this case we do not believe these proposed changes are appropriate for either gas code but see no reason for the exclusion of the iGT UNC in this process.

### ***Suggested legal text***

The suggested licence modification to paragraph 15 of the SSC A11 requires the creation of a defined term “Implementation Related Dates”. This new definition relates to any date that is set out within a notice (this is usually the Final Modification Report) given under paragraph 15 from the Transporters to the Authority. As explained above, the implementation dates relating to a modification proposal are not confirmed within a notice until after the Authority



decision has been made. Therefore this proposed definition would be meaningless within SSC A11. The associated proposed changes with paragraph 15 would therefore not address the issues that have been raised in this open letter or in the previous consultation.

We would welcome further discussion on this matter and if you have any questions that we can assist you with then please either contact me or Simon Trivella (contact details below).

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Edwards", with a long horizontal flourish extending to the right.

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