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7 December 2009

Dear Mark,

Code Governance Review Initial Proposals – illustrative licence modification drafting

Thank you for the opportunity to comment on the illustrative licence drafting. We note your comments regarding the purpose of the illustrative drafting bearing this in mind we have only commented on significant issues that arise if the illustrative drafting becomes the actual route for giving effect to Ofgem's Initial Proposals.

In terms of process the Initial Proposals did not set out what Ofgem intended in one specific area, the inclusion of connection charging methodology for gas distribution within these arrangements. Given that the majority of gas connections are provided by third parties it is not clear what this is intended to achieve or whether this has been given due consideration by Ofgem.

Our comments on the three areas are set out below:

Annex 1: Major Policy Reviews and Self Governance, Standard Special Condition A11 Network Code and Uniform Network Code

NGN's overriding concern here is that the details of the modification process under both the Major Policy Review (MPR) Route and the Self Governance Route (i.e. proposed paragraphs 15A to 15F) should actually be an amendment to the UNC Modification Procedures so that they can be applied and modified consistently.

We are concerned about the brevity of drafting for the Major Policy Review route (paragraphs 15A to 15C), the lack of predefined criteria and procedures leaves much of the detail of any potential MPR related modification to be resolved by the Authority in its direction to the licensee. If the direction is not specific enough the licensee will be exposed to undue risk in using its judgment to draft and raise a proposed modification if the Authority subsequently judges whether its original direction has been fulfilled. On a small but important point of detail modifications can be *drafted* and/or *raised* not *made* to the UNC as presently set out in paragraph 15 A

Our concern on the Self Governance route is that the Panel is left to decide what is a "trivial effect" it is unlikely that the Panel body will be qualified to make a robust decision in this respect across the range of criteria set out in 15D a (i)-(vii) in the case of safety, security of supply, management of market and network emergencies (15D a (v)) it is debatable as to whether the Panel has any qualification or jurisdiction to make such judgements.

Annex 2 : Code administrators and small participants/consumer initiatives, Standard Special Condition A11 Network Code and Uniform Network Code

Our main comment here is to question why this licence condition is being modified instead of amending the existing Joint Office duties and responsibilities in particular we don't understand the need to create a "code administrator" under SSC A11 in addition to the Joint Office. We reiterate our comments on Annex 1 detail regarding the modification procedures and panel constitution should be amendments to the relevant UNC documents not the licence to ensure consistency of application.

NGN does not consider a suppliers and shippers who have close to one million supply points to be "small". This definition should be revised down to a more appropriate level if Ofgem proceeds with these proposals.

Annex 3 : Charging Methodologies, Standard Condition 4B, Standard Special Conditions A4, A5 and A11

Our immediate observation here is that the illustrative licence drafting diverges significantly from our understanding of Ofgem's Initial Proposals. We have a number of concerns based on the proposed drafting:

- Why has the connection charging methodology (Standard Condition 4B) been included? Our understanding from Ofgem's consultations was that the proposals concerned gas (distribution) transportation charging arrangements only. We believe that extending Ofgem's proposals to gas distribution connection charging could lead to some perverse outcomes given that unlike transmission, distribution connection provision is a competitive market. For example, under Ofgem's proposals we are required to set up a forum with potential competitors to determine how we are going to charge. This does not appear compatible with the Competition Act. If the inclusions of connection charging is a policy objective for transmission Ofgem need to give careful consideration of how to "carve out" gas distribution connection charging.
- The proposed drafting appears to impose time limits on modification proposals this will reduce the flexibility to prioritise modifications subject to consultation with users. Our other concern here is that managing charging modification proposals to prescribed timescales including an implementation date maybe contrary to our existing obligation to use reasonable endeavours not to make changes to charges more than once (Standard Special Condition D11 2(b))
- With regard to option 3 we reiterate our concerns from previous sections that governance arrangements for particular code or agreement should be contained in one location to ensure consistency of application. In this case we believe all arrangements relating to the modification of the charging methodology should sit under Standard Special Condition A5 Obligations As Regard Charging Methodology

We would have significant concerns as outlined above, if Ofgem proceeds with proposals on charging methodologies based on the illustrative licence drafting set out in Annex 3.

Please let me know if you would like any clarification of any aspect of this response. Our response can be regarded as non-confidential.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Parker', with a stylized flourish at the end.

Stephen Parker
Regulation and Commercial Director