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Dear Bimbola,

### **Gas Distribution Licence Review: Phase 1 – Proposals for restructuring the Gas Transporters Licence**

National Grid owns and operates the high voltage electricity transmission system in England and Wales and operates the Scottish high voltage transmission system. National Grid also owns and operates the gas transmission system throughout Great Britain and through its gas distribution business transports gas in the heart of England to approximately 11 million customers. In addition National Grid owns and operates substantial electricity and gas assets in the United States.

This response to Ofgem's consultation on proposals for re-structuring the Gas Transporters Licence is submitted on behalf of National Grid Gas (NGG), incorporating the views of both the gas distribution and transmission businesses.

This response is not confidential and may be published on the Ofgem website.

#### **Summary**

NGG agrees with Ofgem that the Gas Transporters (GT) Licence in respect of Gas Distribution could benefit from modifications to improve its clarity and ease of use. Steps towards this objective were taken during the Licence drafting process for the last Gas Distribution Price Control in 2007/08, when a number of Distribution specific Licence conditions were moved from Part A to Part D and substantially re-drafted to improve clarity. We consider that, to the extent that this review is progressed, this approach should be continued.

NGG is concerned that the review will require significant regulatory, legal and "subject expert" resources to complete the drafting of the GT Licence at the time that the same personnel will be employed in the GDPCR2 process. Given that GDPCR2 is complicated by new frameworks and approaches arising from the RPI-X@20 review, the additional workload this will entail will dilute availability for the Licence review with consequential risks to the quality of the output of this review. Furthermore, it is inevitable that, in some cases, Licence conditions will be drafted once in this review and then re-drafted as a consequence of GDPCR2. This is not an efficient use of resources within both Ofgem and GDNs.

For the reasons stated in the previous paragraph, NGG therefore recommends that the Licence review be deferred until GDPCR2 is complete. If, nonetheless, the review proceeds on the timescales outlined by Ofgem, we support a phased approach and in particular, completing the Licence restructuring ahead of any re-drafting of Licence conditions. We also consider that any redrafting should be conducted on sound "plain English" principles, but with due regard to the need to recognise

that the licences are legally binding documents, the breach of which can lead to financial penalties being imposed on licensees and, as such, the drafting must not compromise the conceptual and legal certainty of the existing drafting approach.

With regard to the four options outlined by Ofgem we consider that Option 3 (transferring relevant Standard and Part A Standard Special Conditions into respective NTS and GDN Parts (part B and D) of Part IV, while retaining shared conditions in Part A) is the most efficient and pragmatic approach. Option 3 would be the most effective method of simplifying those parts of the GT Licence affecting Distribution, while retaining genuinely shared conditions, thereby minimising the impact on the Licence in respect of the NTS and ensuring consistent and singular regulatory treatment for those conditions that are common to the Licensees. It has a further advantage in that it is likely to be the least disruptive and resource intensive of the options outlined. This approach is also in accordance with the licence structure that Ofgem required to be put in place at Network Sales and which has proved to be a workable and comprehensible tool for industry governance in the subsequent five years.

The remainder of this response is concerned with answering the questions raised by Ofgem in the consultation.

### **Consultation Questions**

#### **Question 1 – Are there any additional options you would like to be included for consideration?**

We have not identified any other practical options, save in relation to the proposed modified version of Option 3 discussed in the response to question 4 below.

#### **Question 2 – Are there any other implications of the various options presented which you believe have not been considered?**

All options, with the exception of Option 4 (leave the licence structure as it is), could be utilised for the purposes of re-structuring the Licence. Ofgem have rightly identified that Option 4 would require significant involvement of the NTS as Part A modifications would involve all Licensees. It would also potentially impact on optimisation of the Licence structure from a Gas Distribution perspective as other Licensee requirements would need to be taken into account.

Options 1 and 2 effectively separate and replicate the NTS and GDN conditions and therefore create a number of duplicates with the same function. It was recognised at the time of Network Sales that a number of conditions were common to both the NTS and GDNs and the most efficient method to ensure that those conditions remained consistent was to group them within Part A or, in some cases, maintain as Standard Conditions. Nothing in the industry has changed which could render this overall approach and analysis incorrect in the mean time.

With the benefit of hindsight since Network Sales, it is apparent that some conditions are more applicable to GDNs than to the NTS and a number of them could be transferred to the relevant part of the Licence (Part D). However, there remain a significant number of conditions that are equally applicable to both the NTS and DN licensees and which are necessary for the orderly operation of gas transportation as a whole (especially given that there are not separate licenseable activities under the Gas Act for transmission and distribution, as there are under the Electricity Act). These conditions apply in common to NTS and DN licensees and should continue to apply equally to each such licensee. If either options 1 or 2 were adopted, it is likely that these conditions would diverge over time leading to complexity and potentially conflicting or misaligned duties for NGG as licensee in respect of the NTS and RDNs. On the other-hand, if Ofgem wished to maintain consistency, it would need to consult on two identical Licence modifications, with the possibility that one category of Licensee might object, while the other accept, again leading to a further risk of unintended misalignment. Overall, therefore we believe that it is more efficient to recognise common Licence conditions and maintain shared and transparent obligations.

**Question 3 – Do you have a preference for any particular option? Please give reasons for your choice?**

For the reasons outlined above we believe that Option 3 (transferring all standard and relevant Standard Special Conditions in Part A that would clearly benefit from separation, into respective NTS and GDN Parts) is the optimal approach to ensuring the Gas Distribution Licence conditions are clarified while minimising impact on the NTS and critically, maintaining consistent and transparent treatment of genuinely shared obligations going forward. Option 3 does not preclude re-drafting of shared Licence conditions at a future date, either as part of or after TPCR5 and GDPCR2. It is also likely to be the most efficient and cost effective approach, in what will be a complex and difficult process.

**Question 4 – Do you have any general comments or observations that you think should be taken into consideration as part of the consultation?**

NGG has previously outlined its concerns in relation to the timing of the review running concurrently with an entirely new GDPCR2 process and the consequential impact this could have on resources and hence programme completion. While we support the intent of the review, we consider the timing to be ill-judged. Even without the additional pressures of GDPCR2, this would be a difficult and complex task to complete successfully.

In relation to Option 3, it may be better to transfer the relevant NTS specific conditions into Special Conditions in Part C and remove the Standard Special Conditions in Part B altogether.

I trust the information provided in this response is clear, but should you wish to discuss any points arising please contact Sally Brown on 01926 656375.

Yours sincerely

Paul Rogers  
By email