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*Promoting choice and value for
all gas and electricity customers*

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Date: 25 January 2013

Dear Mr Schuurs,

Designation of market operator of the independent market for balancing

I am writing in relation to your request for the designation of ENDEX Gas Spot Limited as the market operator of the independent market for balancing, as required by Standard Special Condition A11 (Network Code and Uniform Network Code) as modified by Special Condition C6 of the Gas Transporter Licence of National Grid Gas Plc. This licence condition requires National Grid Gas Plc to use all reasonable endeavours to appoint a person having:

- (a) financial resources,
- (b) skilled and experienced personnel, and
- (c) systems

adequate to ensure that the independent market for balancing is conducted in an orderly and proper manner. This requirement is deemed to be satisfied if the market operator is either; a) a person recognised by the Financial Services Authority under the Financial Services and Markets Act 2000 as an investment exchange; or b) a person designated by the Gas and Electricity Markets Authority (GEMA) for the purposes of appointing an operator of the independent market for balancing and if that designation has not expired or been revoked. This designation is subject to eight designation criteria, set out at Appendix two of this letter.

As you know, this designation is currently held by APX Commodities Limited (as the legal successor company to EnMo Ltd). Following the proposed reorganisation of APX-ENDEX – notified to GEMA in your letter of 28 September 2012 – you propose that the market operator role will be performed by ENDEX Gas Spot Ltd from 1 February 2013. Before ENDEX Gas Spot Ltd can take on this role we must consider whether they meet the criteria for designation.

Our process for considering the designation of ENDEX Gas Spot Ltd

As you are aware, alongside our internal consideration of the information you have provided, we have considered the independent report conducted by DNV KEMA Ltd

that assessed ENDEX Gas Spot Ltd against the designation criteria. As this report contains commercially sensitive information, we do not intend to make it public. We have also sought National Grid's views on ENDEX Gas Spot Ltd's suitability for designation, which they set out in their letter to Ofgem of 20 December 2012.

Our decision on the designation of ENDEX Gas Spot Ltd

I am pleased to inform you that, following full and proper consideration of all the relevant material, we can now confirm the designation of ENDEX Gas Spot Ltd. Appendix one contains the designation notice.

In reaching this designation we have carefully considered our statutory duties and believe this decision to be consistent with such duties. In particular, by meeting the designation criteria set out in Appendix two, and in the manner in which ENDEX Gas Spot Ltd will need to operate the market, the interests of consumers will be protected in accordance with the Authority's principal objective. In this regard, by ensuring the independent market for balancing operates effectively, ENDEX Gas Spot Ltd will enable market participants to continue to efficiently meet their obligations to supply gas, avoiding charges for imbalance. This benefits consumers through lower bills and secure supplies.

The decision to designate ENDEX Gas Spot Ltd is made on the basis of the eight designation criteria in Appendix two. In order to meet these criteria, ENDEX Gas Spot Ltd has given assurances to GEMA that a series of contracts, processes and procedures will be put in place before or soon after ENDEX Gas Spot Ltd takes over the role of the market operator from APX Commodities Ltd. The designation of ENDEX Gas Spot Ltd is subject to these contracts, processes and procedures taking effect. In particular, the designation is subject to ENDEX Gas Spot Ltd meeting the following pre-conditions:

- The signing of all relevant contracts, including: the Market Operator agreement between National Grid Gas Plc and ENDEX Gas Spot Ltd (and termination of the Market Operator agreement between National Grid Gas Plc and APX Commodities Ltd); the Clearing Co-operation Agreement between ENDEX Gas Spot Ltd as the Market Operator and APX Commodities Ltd as the clearing agent for trades on the market in a form agreed with National Grid Gas Plc; and an agreement, in lieu of, and as an interim measure to, an amendment to Uniform Network Code, to ensure that obligations of the Trading System Operator under Section X paragraph 2 of the Uniform Network Code are applicable to the Trading System Clearer.
- The meeting of all pre-conditions for designation identified in the independent report produced by DNV KEMA Ltd. In particular, the identification and implementation of interim measures to mitigate risks resulting from the reorganisation of APX-ENDEX; and within six months, the submission of a plan to GEMA and National Grid Gas Plc setting out how these risks will be permanently resolved.
- Confirmation that membership agreements have been signed by a sufficient number of market participants to ensure continued liquidity on the market.

If GEMA does not believe that ENDEX Gas Spot Ltd are taking all reasonable measures to ensure these pre-conditions are met within a reasonable timeframe, we may consider exercising the right in paragraph 2 of the designation notice to revoke the designation.

Next Steps

This designation provides clearance from GEMA for National Grid Gas Plc to proceed with the appointment of ENDEX Gas Spot Ltd as the market operator. However, in the coming months, GEMA will review the process and criteria for designation and if appropriate, will consult on any proposed changes. For example, these may include changes to the designation criteria which GEMA deems to be appropriate in light of the Regulation on Energy Market Integrity and Transparency (REMIT) and in particular the further implementing measures for REMIT which are expected over the coming months. If we do decide to revise the designation criteria, we would need to reconsider the designation of ENDEX Gas Spot Ltd against the new criteria.

I hope you are satisfied with Ofgem's consideration of the designation and the outcome of this process. Please contact Phil Slarks (phil.slarks@ofgem.gov.uk, 0207 901 7454) in the first instance if you would like to discuss this matter further.

Yours sincerely,

Andrew Wright
Senior Partner, Markets Division

Appendix 1 – Notice of Designation

Designation for the purpose of paragraph 22C of Standard Special Condition A11 (Network Code and Uniform Network Code) as amended by Special Condition C6 of the Transporter Licence of National Grid Gas Plc (NGG)

The Gas and Electricity Markets Authority (the Authority) for the purpose of paragraph 22C of Standard Special Condition A11 (Network Code and Uniform Network Code), hereby designates ENDEX Gas Spot Limited (the Operator), subject to the following conditions:

1. This designation shall take effect on 1 February 2013 and shall continue in force until revoked by notice in writing served by the Authority or the Operator on a day at least one year before the notice is to take effect, unless previously revoked in the manner hereinafter provided.
2. The Authority may at any time revoke this designation by not less than the requisite notice period given in writing to the Operator –
 - (a) if the Operator requests or otherwise agrees in writing with the Authority that this designation should be revoked;
 - (b) if the Authority, after consultation with the Operator, considers it appropriate to do so;
 - (c) if the Operator fails to comply with the requirements of a notice issued by the Authority, which requires the Operator, within a period specified in the notice, to take the action, as specified in the notice, to make good a failure (described in the notice) to continue to meet the criteria applied by the Authority, for this designation (see Appendix 2);
 - (d) if the Operator –
 - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 but subject to paragraph 3 below) or any voluntary arrangement is proposed in relation to it under section 1 of the Insolvency Act 1986 or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 29 of the Insolvency Act 1986) of the whole or any material part of its assets, or undertaking appointed;
 - (iii) has an administration order under Schedule B1 of the Insolvency Act 1986 made in relation to it;
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
 - (v) becomes subject to an order by the High Court for winding-up.

3. For the purposes of paragraph 2 (d)(i) above, section 123 (1)(a) of Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£10,000" or such higher figure as the Authority may from time to time determine and the said section 123 (1)(a) shall not apply if the demand therein referred to is being contested in good faith by the Operator with recourse to all appropriate measures and procedures, or if the demand is satisfied prior to the expiry of the notice given to the Operator given by the Authority.
4. For the purposes of paragraph 2 the requisite notice period shall be –
 - (a) for the purposes of sub-paragraph 2 (d), 24 hours; and
 - (b) for all other purposes, 30 days.

The official seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of:

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Andrew Wright, Senior Partner, Markets
Duly authorised on behalf of the Gas and Electricity Markets Authority

25 January 2012

Appendix two – Designation criteria

Availability of facilities

1. The Operator must make available and operate market facilities which enable National Grid Gas and holders of gas shippers' licences using those facilities to participate in a market through which they can buy and sell gas for the balancing-
 - a) by National Grid Gas of its pipeline system; and
 - b) by shippers of the gas they arrange with National Grid Gas to introduce into and take off its system.

Fitness

2. The Operator must be a fit and proper person to operate the market described in paragraph 1 and in particular must ensure that-
 - a) the systems and controls used, or to be used, in the operation of the Operator's market facilities, in particular those concerning the transmission of information, the assessment and management of risk and the effecting and monitoring of transactions, are appropriate for the scale and nature of the market;
 - b) adequate procedures are adopted for making and amending rules for the market and for keeping the rules under review;
 - c) its conduct as market operator and its systems are such that -
 - i. it obtains no unfair commercial advantage as compared with any other participant in the market described in paragraph 1,
 - ii. it avoids undue preference or undue discrimination between such market participants, and
 - iii. no such market participant obtains any unfair commercial advantage.

Financial Resources

3. The Operator must have financial resources sufficient for the proper operation of the market described in paragraph 1 and taking into account any other activity carried on by the Operator.

Cooperation with the Authority

4. The Operator must be able and willing, by the sharing of information and otherwise, to co-operate with the Gas and Electricity Markets Authority (the Authority)
 - a) generally;
 - b) in relation to the consideration by the Authority of whether any participant in the market described in paragraph 1 is in breach of any obligation arising under the Gas Act 1986 or under the terms and conditions of any licence granted or order made under that Act; and
 - c) in relation to the consideration by the Authority of whether the Operator is continuing to meet these criteria.

Promotion of good market conduct

5. The Operator must be able and willing to promote and maintain high standards of integrity and fair dealing in the conduct of business on the market described in paragraph 1, including by ensuring that
 - a) participants in the market have equally open access to information that may be relevant in determining the price of gas traded on the market;
 - b) business conducted through the Operator's facilities is conducted in an orderly manner, and
 - c) appropriate measures are adopted to prevent abuse of the market, facilitate its detection and monitor its incidence

Market arrangements

6. The Operator must have satisfactory arrangements in relation to the market described in paragraph 1 for -
 - a) facilitating the timely discharge of rights and liabilities of the parties to transactions effected on the market, whether by performance, compromise or otherwise;
 - b) recording the transactions effected on the market;
 - c) monitoring and enforcing compliance with its rules and any arrangements made by it as mentioned in paragraph (a);
 - d) the investigation of complaints in respect of the use of its facilities for the operation of the market.

Clearing

7. The Operator must have default rules in relation to the market described in paragraph 1 which -
- a) in the event of a participant in the market appearing unable to meet his obligations in respect of one or more contract entered into through the market, enable action to be taken to close out his position in relation to all such contracts to which he is party that are unsettled; and
 - b) may authorise the taking of the same or similar action in relation to a participant in the market who appears to be likely to become unable to meet his obligations in respect of one or more contracts entered into through the market

Emergency suspension

8. The Operator must have satisfactory arrangements in relation to the market described in paragraph 1 for the rapid and orderly suspension of trading -
- a) in the event of the failure of the facilities made available by the Operator for the operation of the market; and
 - b) in the event of a Network Gas Supply Emergency (as defined in the Uniform Network Code).