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Joanna Campbell
Ofgem
9 Millbank
London,
SW1P 3GE

Dear Joanna

Xoserve – Consultation on the Legal and Regulatory Framework to Establish New Arrangements for the Gas Central Service Provider

The AIGT welcomes the opportunity to respond to the consultation on the legal and regulatory framework to establish new arrangements for the gas Central Service Provider (“CSP”). AIGT members have a vested interest in the outcome of this review as our member companies are likely to be required to use the services of Xoserve as a single service provider under UNC0440 and the forthcoming IGT039 modifications. On this basis we are looking to actively participate in industry discussions on the arrangements for the CSP to ensure that the outcome is sufficiently flexible to seamlessly integrate IGTs in the future.

In summary the AIGT:

- Supports the approach of “option 2” and would suggest a hybrid approach to be taken forwards with high level regulatory and funding obligations set out in parties’ licences with the detailed requirements set out in the UNC.
- Believes that IGTs would need fair and equitable representation should the detail of such requirements be set out in the UNC.
- That Xoserve as the CSP should not become a signatory to the UNC.
- That the current ownership arrangements do not act as an effective control of risk.

Our full response can be found in appendix 1.

Yours sincerely,

A handwritten signature in black ink that reads 'John Barrett'. The signature is written in a cursive style with a large initial 'J'.

John Barrett
Secretary, Association of Independent Gas Transporters

Appendix 1

Can the UNC efficiently require parties to jointly participate in the governance and funding arrangements or is it more appropriate to include these requirements in each party's licence?

IGTs are likely to be required to use the services of Xoserve as a Single Service Provider (“SSP”)¹ under UNC0440 and the forthcoming IGT039 modifications and we therefore have a vested interest in the outcome of this work. We believe that both approaches could be used to ensure parties jointly participate in the governance and funding arrangements of the CSP. However, we would be concerned with a UNC only approach as this could side-line IGTs to some extent who currently and in the future will have limited representation under the UNC. We would therefore support the approach outlined in option 2 but would suggest that the high level obligations are placed in parties’ licences and the detail set out in the UNC. Careful consideration will need to be given however to the drafting at both levels to ensure that each party has a clear set of requirements and obligations and also to ensure that no party can be marginalised or unduly excluded from any future arrangements.

IGTs do not yet have certainty around a number of aspects of SSP, in particular how funding will impact IGTs. It is unlikely that IGTs will be using the services of Xoserve as the SSP/CSP before the funding, governance and ownership (“FGO”) work has been implemented and we do not therefore believe that IGTs should be subject to any potential licence requirement at this stage. However, this may be possible in the future once the requirements and terms are agreed and in place for IGTs to use SSP. As IGTs currently utilise Xoserve to fulfil a number of industry requirements and will also be required to use the services of the CSP, we believe that it is essential for IGTs to contribute towards such discussions to ensure that IGTs can be seamlessly integrated into such arrangements in the future.

We agree that the use of the UNC or Licence should result in a framework that facilitates a responsive IT service provider. In terms of Ofgem’s involvement, we believe that there should not be any major difference between either approach being used. This is on the basis that the industry should lead on the development work and put forwards proposed changes to parties’ licences or the UNC. Though the licence approach would require Ofgem to oversee the licence consultation process, Ofgem’s involvement should be similar in either case as will support such meetings and approve/reject material proposed changes. Key to this however is support from the industry in proposing and developing solutions.

In terms of visibility, we do not believe there to be any difference between either approach. However, if there is to be extensive detail around the participation in the governance and funding arrangements, the licence may not be the most suitable home as is a fairly rigid instrument. We would therefore recommend setting out the high level obligations in parties’ licences with the detail set out in the UNC which would follow the approach set out in “option 2”. Not only will this provide a less rigid approach to setting the detail around parties’ obligations, it also allows for future changes to be made less onerously. Furthermore the approach will also provide options in terms of how non-compliance issues can be managed. As an example, UNC sanctions and remedies could be used for minor issues but where the non-compliance is considered to be of a more severe nature (and where Ofgem feels necessary), action can be taken by Ofgem through a licence non-compliance route. The use of the licence to set out the high level obligations and the UNC the detail also has the added benefit that such an approach should ensure that compliance is a priority

¹ “SSP” is used for current arrangements being discussed under IGT039 and UNC0440 and “CSP” for matters covered in this consultation.

for each party at a senior management level which on the whole should better align obligations, risks and control across all parties.

In summary, the use of the licence to set out the high level obligations in parties' licences with the detail set out in the UNC would better allow for the ongoing operation of arrangements to be industry led. Such an approach would also be simple and practical to implement and would also allow regulatory oversight to be retained to ensure the protection of public interest which we believe to be in line with CEPA's original key objectives.

Are there any additional benefits in Xoserve becoming a party to the UNC, when compared to the service agreement approach?

We do not believe Xoserve should become a party to the UNC as we do not foresee any tangible benefits of such an approach being taken. We believe that the service agreement approach currently in use with the GDNs and NTS will require less change to implement when compared to Xoserve becoming a party to the UNC under options 3 and 4 as the model and boiler plate terms already exist. Should Xoserve become a party to the UNC, this may add a layer of complexity to the UNC arrangements as Xoserve may wish to have the ability to vote on certain matters covered under the Code. Such matters for example may include the service charge application arrangements or liability arrangements. However, there would be a conflict of interest should Xoserve be able to vote on modification proposals outside of those regarding its liabilities and/or service requirements. This may require a restructure of the UNC to accommodate (possibly using a DCUSA "part" style approach) which is likely to be beyond the scope of the work required and potentially take longer to implement than options 1 or 2.

A further consideration is whether the CSP may be replaced by a party not owned by the GDNs and NTS in the future. It cannot be said for certain that an unlicensed commercial CSP will feel comfortable in becoming a UNC signatory as such arrangement will bring its operations from a commercial environment to a regulated environment where the CSP may ultimately be answerable to Ofgem. These arrangements would also then differ to those generally set up with IT service provision contracts which may restrict potential future companies from taking on CSP services. On the basis that key objective 4 from CEPA's October 2013 report requires the new framework to "be simple and practical to both implement and operate", requiring the CSP to become a UNC signatory may not allow this when considered on a more long term basis as such arrangements may need to be unravelled should a non GDN and NTS owned entity become the CSP.

Currently Xoserve provide a number of non-code services to parties outside of the UNC and should Xoserve become a UNC party, careful consideration will need to be given as to how such services will continue to be provided. This may be particularly relevant for IGT Single Service Provision where the solution is potentially looking to make use of non code user pays as a cost recovery mechanism. We therefore agree with Ofgem's initial view that the CSP becoming a party to the UNC is likely to create additional complexity and the AIGT does not therefore believe this option should be pursued. The AIGT therefore does not support options 3 or 4 which would require the CSP to become a party to the UNC.

General comments on the content of appendix 1 of the consultation

We note that the appendix 1 of the consultation refers to triggers for the reopener to review GTs' revenue allowances but does not consider how this would affect IGTs. We would like to understand how Xoserve's charges are recovered through the GDN's price control in order for AIGT members to understand the impacts on their businesses. We would welcome the opportunity to discuss this further.

We also note that the 'October 2013 decision' document² sets out that GTs will retain ownership of Xoserve. Though we acknowledge that the ownership of Xoserve will not be amended as a result of this work, we believe this may increase risks to the industry as failure by the CSP would result in liabilities being passed through and ultimately recovered from end users. We would ask Ofgem to consider whether this is deemed an effective control of risk and whether this promotes a responsive and client facing approach especially when compared to if the CSP would be operating on an independent commercial basis.

² https://www.ofgem.gov.uk/sites/default/files/docs/decisions/xoserve_decision_oct13.pdf