

Rupika Madhura
Ofgem
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26th May 2016

Dear Rupika,

Consultation on proposed modification to Standard Special Condition (SSC) A15 (Agency) of the Gas Transporters (GT) Licence and proposed new SSC A15A (Central Data Service Provider)

1. Thank you for the opportunity to comment on the above consultation. This is a non-confidential response on behalf of the Centrica Group, excluding Centrica Storage.
2. We support the regulatory intent to deliver the desired changes in responsiveness, flexibility and transparency relating to the provision of central data services. We support and continue to engage with industry programmes to develop the detailed arrangements. Further, we welcome improvements in the proposed licence condition such as the explicit requirement for the CDSP charging methodology to be placed in the Uniform Network Code (UNC) and, therefore, will be subject to established governance arrangements and regulatory oversight.
3. SSC A15A will oblige GTs to develop a framework which will directly affect Shippers and, as such, we have a strong interest in ensuring that the framework is appropriate for all industry parties.
4. While the detailed arrangements are still being developed, the appropriateness of the provisions in the proposed licence condition cannot be fully assessed, nor the risk or liabilities to which users might be exposed. This is not acceptable.
5. Concerns raised in our response to the previous informal consultation on SSC A15A have not been addressed. Further, it is unclear whether the proposed framework takes full account of the CMA's Energy Market Investigation provisional remedies such as the right to fulfil the role to act as a delivery body being awarded via competitive tender.
6. In light of these considerations, Ofgem must set out the following points before the drafting of SSC A15A is finalised:
 - **The proposed scope of the CDSP and the services it is required to deliver**
 - **Detail on what is meant by User's responsibilities relating to 'joint control' of the Provider**
 - **The proposed treatment of risks and liabilities (both historical and from April 2017)**
 - **Confirmation that users will be given the right to appeal the content of the CDSP business plan in the licence condition**
 - **Confirmation that the appeals process relating to the business plan and the budget must be fully set out in the licence condition**
 - **Confirmation that cost reflectivity will be explicitly recognised in the charging methodology objective in the licence condition**
7. Confirmation of the 31 March 2017 delivery date is welcomed. However, we are concerned this may be challenging considering the scale and complexity of the proposed arrangements.

The proposed scope of the CDSP and the services it is required to deliver

8. We appreciate that the “CDSP services” will be defined in the UNC, but we would like Ofgem to clarify what it intends should be included in “CDSP services”. As that definition has not yet been tied down, it remains unclear to us whether “CDSP services” includes only core UNC services or also includes services that the CDSP may provide to third parties. As the term “CDSP services” is used throughout the licence and is tied to the understanding of important matters such as the director appointment, the control of the CDSP, the not for profit regime and the appeals process, it is essential that there is clarity and agreement on what the “CDSP services” encompasses before the drafting of SSC A15A is finalised so as to ensure that the term is used correctly throughout the condition.

Detail on what is meant by User’s responsibilities relating to ‘joint control’ of the Provider

9. We would like to understand what is intended by “other users of CDSP services” will “jointly control and govern the Provider on an economic and efficient basis”. In particular, this means that we would like further clarity on a) the user pays regime, b) the not for profit model, c) what is encompassed in “CDSP services” and d) whether “other users of CDSP services” includes non-code parties.

The proposed treatment of risks and liabilities (both historical and from April 2017)

10. We would like clarity on how it is envisaged that the user pays regime will operate in terms of what risk and reward is to be borne by Users. Further, we would like to understand how the not for profit regime sits with the user pays regime. In particular, a) what will happen in respect of historical risks where the root cause lies in the period prior to April 2017 (even if the risk crystallises after April 2017) and b) whether the user pays regime relates just to the provision of the services or whether, in the context of a not for profit regime, there are implications for users in respect of who bears responsibility for the CDSP’s risks in general.
11. In respect of the proposal that the CDSP is a not for profit organisation, we do not believe that the principle nor the drafting of SSC A15A is sufficiently clear on whether, provided the Authority consents, the CDSP can make a profit but not make a distribution to shareholders or whether, provided the Authority consents, the CDSP can both make a profit and a distribution (within the constraints of company law). To help with this clarity, it would be helpful if Ofgem provided set out who they believe will perform the role of the CDSP

Confirmation that users will be given the right to appeal the content of the CDSP business plan in the licence condition

12. We are pleased Ofgem recognise the need for the budget to be appealable. We believe the appeal process must be extended to the business plan as it is essential that we are able to appeal the underpinning rationale as well as the budget itself.

Confirmation that the appeals process relating to the business plan and the budget must be fully set out in the licence condition

13. In order to make the appeals process robust, we would like the licence condition i) to include more detail on the process, such as timescales, notification requirements and what happens to the overturned budget if an appeal is successful and ii) to set out the appeals criteria so that the grounds for appeal are clear.

Confirmation that cost reflectivity will be explicitly recognised in the charging methodology objective in the licence condition

14. Cost reflectivity must be explicitly recognised in this objective so that an obligation is placed on the GTs to ensure a recommendation from the Funding, Governance and Ownership (FGO) review is fully reflected in the detailed arrangements to be developed.
15. If you have any questions regarding any aspect of our response, please do not hesitate to telephone me.

Yours sincerely

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Regulatory Manager
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APPENDIX ONE – DETAILED COMMENTS ON THE DRAFT SSC A15A

- Paragraph 1: We believe that referring to the CDSP as the “Provider” is confusing. We suggest that references to the CDSP are retained because a) there are various “providers” within the industry whereas the term “CDSP” is widely recognised and b) the supporting documents such as the UNC modification and DSC, in their current draft form, refer to the “CDSP” so it would be consistent to use “CDSP” in the licence condition as well.
- Paragraph 3: “Relevant gas transporters” are defined as “other gas transporters”. This is very wide. The definition should be tightened up to refer to “*gas transporters licensed by GEMA under the Gas Act 1986 who hold shares in the CDSP*”.
- Paragraph 3: As stated in our December 2015 response, the draft refers to the appointment of the CDSP as though this is an entirely new arrangement; it doesn’t take account of the fact that there is an existing entity with live contracts providing the same or similar services. For example, paragraph 3 provides that the current SSC A15 (Agency) will cease to have effect but it does not contemplate what will happen to the AS Agreement (which is one of the subjects covered by SSC A15 (Agency)). It does not necessarily follow that because SSC A15 (Agency) falls away, the underlying AS agreement (which was put in place in accordance with SSC A15 (Agency)) is dealt with. We would like clarity on what is happening in respect of the AS Agreement, how it will be replaced by the DSC and any accrued rights and liabilities under it.
- Paragraph 4: As stated in our December 2015 response, there needs to be clarity on what the definition of “CDSP services” encompasses in order to understand the implications of the use of the term throughout SSC A15A.

We would like to understand whether Ofgem intends “CDSP services” to cover core services or also third party services. To ensure that the term “CDSP services” is used appropriately throughout SSC A15A, the definition under the UNC first needs to be tied down and agreed before the licence condition drafting can be finalised.

We note that paragraph 6(b) says that the UNC has to set out a classification of CDSP services including those used by GTs, shippers and other code parties. We would like clarification on whether or not the drafting means “including “*but not limited to*”” these parties such that “CDSP services” also includes third party services. This is important as, for instance, the nomination and removal of directors pursuant to paragraphs 5(a) and 7(c)(i) is by “users of the CDSP services” and the obligations under paragraphs 7 and 8 are all linked to the “CDSP services”.

It is also not clear to us, in paragraph 4, what the “minimum requirements” of Part A are in respect of the CDSP services as the rest of Part A doesn’t seem to set out these minimum requirements.

(In respect of drafting, if “CDSP services” are going to be defined under the UNC then we suggest that the licence says that the Provider needs to be appointed to provide “CDSP services” “*as such term is defined in the UNC*”.)

- Paragraph 5: For sections of the licence that are in force prior to April 2017, the drafting should be clear about when these obligations need to be complied with e.g. the obligation under the Articles of Association to appoint non-transporter directors.
- Paragraph 5(b): We would prefer for paragraph 5(b) in lines 1 and 3 to refer to the “*right to participate*” rather than the “*opportunity*”.

Paragraph 5(b) says: “Non-RGT users’ representatives are given the opportunity to participate in the contract management and change management process *related to the*

services". We would like to understand why paragraph 5(b) refers to "services" and not "CDSP services" (this is linked to the need for clarity on the definition of CDSP services).

- Paragraph 5(c): As stated in our December 2015 response, for market participants to fully engage with any CDSP consultation on budget and business planning, they need access to all relevant supporting information used to create them. It is not certain that the CDSP will provide this. We believe that this Licence Condition should oblige Gas Transporters to ensure the CDSP provides this information.
- Paragraph 6(a): The reference to "Agent" should be to "Provider".
- Paragraph 6(c): As stated in our December 2015 response, we believe it would be appropriate for the full charging methodology to be included within the UNC, and made subject to UNC change governance. This should be referenced here.
- Paragraph 6(c)(i): As stated in our December 2015 response, the term "jointly control" can mean a number of different things, and therefore needs to be more explicitly defined here. For example, it could include control by share ownership, control by contractual rights, control by some sort of voting power, power to remove directors and/or influence a company's policies, or control of a certain percentage of a shareholding but not a lower percentage. We would like clarification to be provided about what is meant by "*other users of CDSP services*" "*jointly control[ing] and govern[ing] the Provider on an economic and efficient basis*". Further detail on and understanding of a) the user pays regime, b) the not for profit model, c) what is encompassed in "CDSP services" and d) whether "other users of CDSP services" includes non-code parties is essential to understand the intention of this provision.
- Paragraph 6(c)(iii) should refer to the DSC (which is already defined in paragraph 6(a)).
- Paragraph 6(d): As stated in our December 2015 response, it is not sufficiently clear what is meant by the term "annual budget". For example, we believe that this also includes an annual business plan, yet can see that this is open to interpretation. We would have material concerns if parties were not able to appeal the contents of the annual business plan. Ofgem should set out specifically here (and throughout the draft) the minimum contents of an "annual budget". Finally, the drafting needs to be clear and detailed in order to make clear what triggers a right to object and whether there are grounds for an appeal. For example, it is not clear what information CDSP users need to provide in their notification.
- Paragraph 6(d): The reference to paragraph 7(c) should be to paragraph 8(c).
- Paragraph 7(a): What is meant by "joint ownership"? The term has legal connotations and the terminology should accurately reflect the exact nature of the shared ownership.
- Paragraph 7(b): We require clarification (which should then be reflected in amended drafting) about whether the Provider can pursue commercial activities that generate a profit provided that those profits are not distributed to shareholders or whether there is a total ban on both (unless the Authority consents otherwise in writing).
- Paragraph 7(c)(i): As stated in our December 2015 response, it is not clear to us what is meant by "transparent and equitable basis" in this context (bearing in mind employment law and its protections). This should be more explicitly defined.
- Paragraph 8: The timing here needs to be clarified. The provisions, as the drafting states, must be included in the DSC by no later than 1 April 2017 but the drafting should also state that the provisions must come into effect on 1 April 2017 (or in line with the later date that Ofgem directs).
- Paragraph 8(c): We consider that the Provider should be required to provide planning information requested by all users.

- Paragraph 8: Please could the meaning behind the words “otherwise procure” be clarified? For example, does this mean that the CDSP could procure the provision of the services and not provide them itself or that it remains directly responsible to users for the provision of the services but can subcontract that provision?
- Paragraphs 8(c), (d) and (e): The drafting needs to be clear and detailed in respect of what constitutes an annual budget, charging methodology and charging statement in order to make clear what triggers a right to object and whether there are grounds for an appeal.
- Paragraph 8(d): We would welcome further clarity on the “user pays” principle means so that we can understand what the recovery of the Provider’s annual budget means. It would, for example, be helpful to understand whether “user pays” relates solely to the provision of the services, and how historical costs relating to the period prior to April 2017 (whether or not they crystallise before or after that date) and extraordinary or catastrophic costs are going to be dealt with under this model. We also need to understand how the user pays model sits in the context of a not for profit, co-operative arrangement.
- Paragraphs 6 and 8(d): The GTs should be obliged to include the detailed charging methodology in the UNC which is then mirrored in the DSC so that the CDSP (as a party to the DSC) is obliged to follow it.
- Paragraph 8(d) should make clear what the “annual budget” relates to i.e. it is the provision of the CDSP services (once the definition of that is tied down). Paragraph 8(e): The charging for the CDSP services should be “cost reflective”. We consider that this obligation should also apply in Parts A and B i.e. before April 2017.
- Paragraph 8(f): The drafting should clarify what is meant by “a financial year”.
- Paragraph 9, 10 and 11 – have been deleted. We understand this has been deleted because the charging methodology can be implemented as directed by the GTs into UNC. We support the charging methodology being in the UNC, but as the UNC requires a modification and the modification is to be finalised and approved by Ofgem, we believe these items should remain in the Licence.
- Paragraph 9: As stated in our December 2015 response, the SSC needs to set out clearly the grounds on which the Authority will decide whether there are grounds for an appeal, what is it considering and what it will take into account. It is currently very unclear what the Authority is considering. (The cross reference here should also be to paragraph 6(d).)
- Paragraphs 10 and 11: As stated in our December 2015 response, we have particular concerns about the high level nature of the wording in this paragraph – for instance, in paragraph 10: what is the Authority “considering” and in paragraph 11: how will the Authority make “its assessment” when the drafting is not detailed.

There also needs to be clear communication, updates and set timeframes for an Authority and a GT response if the incumbent budget is to continue while the Authority considers whether there are grounds for appeal.

There should also be obligations on the GTs to work with the Authority in a timely manner to resolve the issue and to provide such information in response to the Authority’s questions as the Authority may reasonably require in relation to the matter in question.

- Paragraph 11: As stated in our December 2015 response, if the budget is found to require revision but remained in effect while the Authority was considering it, there should be a process for ensuring that funding is corrected such that CDSP users are put in the place they would have been in had the budget not been incorrect.

- Paragraph 13: As stated in our December 2015 response, there needs to be clear timeframes and a process set out here. We also consider that this paragraph should be moved up above paragraph 11 so that the actions/events are in the correct order in the drafting.
- **SSC A15:** See comment above about how the ASA will be terminated and what happens to the ongoing obligations or residual actions/liabilities under the ASA that existed prior to termination. When an agreement ends, there is usually a provision that deals with accrued rights and liabilities and underlying implications.
- **Annex 3 – consequential licence changes:** The draft should say throughout “A15A (which replaced Standard Special Condition A15)” as it is not accurate to say that A15A was “formerly” SSC A15.