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Dear Rupika

CONSULTATION ON PROPOSED MODIFICATION TO STANDARD SPECIAL CONDITION (SSC) A15 (AGENCY) OF THE GAS TRANSPORTERS LICENCE AND PROPOSED NEW SSC A15A (CENTRAL DATA SERVICE PROVIDER)

Thank you for the opportunity to respond to Ofgem's latest informal consultation on proposals to amend the Gas Transporter ("GT") Licence, introducing SSC A15A (Central Data Service Provider) and causing SSC A15 (Agency) to cease to have effect. We are responding in our prevailing capacity as the Transporter Agency and as the company that, subject to the implementation of SSC A15A and appointment by the GTs, is expected to fulfil the role of the Central Data Service Provider ("the CDSP").

Whilst the proposals are broadly consistent with Ofgem's Conclusions in respect of its review of Xoserve funding, governance and ownership, we have specific comments on certain aspects that, with Ofgem's agreement, could be addressed through relatively minor changes to the draft text. These comments are concerned primarily with the CDSP vires, the scope of services, the treatment of profits and the contract framework.

1) Ofgem's Ambition for Xoserve

We are concerned that the proposals set out in paragraph 7(b) are at odds with Ofgem's previously stated ambition for Xoserve to be more flexible and responsive to customer demand for services, and are indeed contradictory.

As drafted, the proposals would require the Company to obtain written consent from the Authority to provide services other than CDSP services. We note, in particular, that the proposed drafting has been amended to make the provision of CDSP services the Company's sole purpose rather than its primary purpose. This would impede the desire for greater flexibility and responsiveness,

as it would create a requirement for a regulatory approval in addition to corporate and contractual approvals, potentially leading to an overhead and longer lead times to bring services to market or customer dissatisfaction in the event that the Authority failed to grant consent.

The proposals also imply that the Company that is the CDSP could, subject to Authority consent, return a profit through its share capital, but also state that the Company's Articles of Association should restrict such a distribution. This arrangement would embed a different position for GT shareholders relative to other users of CDSP services, in that they could have the opportunity to gain rewards from services which others could not. Even if the intention is indeed that shareholders can be paid dividends in certain circumstances, the inconsistency in the drafting in that it both requires an amendment to the Articles to place a prohibition on the distribution of profits but also anticipates that the Authority could consent to such a distribution should be addressed.

We would propose that paragraph 7(b) is redrafted so as to set out the rights of (rather than the limitations on) the CDSP, of its shareholders and of its customers, with regards to the provision of services other than CDSP services and the profits that may accrue from their provision. We submitted suggested drafting on this matter to Ofgem in March 2016, and we have reproduced the relevant text below (with minor amendment to recognise that the latest draft of SSC A15A no longer refers to a "phase 2 implementation date"):

"The CDSP shall be a company the primary purpose of which is to provide the CDSP services (but not to return a profit from the CDSP services (whether income or capital) through its share capital) and shall set out within its articles of association a prohibition on the distribution of profits and declaration of dividends from the CDSP services (save for dividends in respect of profits relating to periods prior to 1 April 2017), and capable of developing and providing services additional to the CDSP services, including, where necessary and subject to Board approval, through the utilisation of surpluses earned in the course of its ordinary business, [the financial benefits from which (profits and/or improved asset utilisation) would benefit users of the CDSP services]."

We acknowledge that Ofgem's revised draft is intended to address our previous comments. If it would be helpful, we would be very happy to discuss this further, to ensure a mutual understanding.

Finally, in order to assist shareholders and customers to understand the extent of their exposure, SSC A15A should also define the treatment of any losses that may accrue from the provision of services other than CDSP services.

2) Definition of CDSP Services

Xoserve already provides a number of Agency Services that are not defined by the UNC, but by reference to the GT Licence and/or other industry Codes. These services are provided equally to and / or on behalf of parties who are and are not UNC signatories. It is important that the drafting of SSC A15A (particularly paragraphs 6 and 8) does not lead to an unnecessarily narrow definition of CDSP services that, if Ofgem's proposals for SSC A15A were to be adopted, might create a requirement on the CDSP to obtain consent from the Authority simply to be able to continue to provide existing services that may not be defined in the UNC.

We have provided at Appendix 1 a table that sets out Xoserve's prevailing service contract framework and gives an example of each type of service. We would want to be assured that the appointment of Xoserve as the CDSP combined with the introduction of SSCA15A would not impede the continued provision of these services by Xoserve. We would be happy to discuss further and provide additional information should this be required to inform the licence drafting.

3) CDSP Contract Framework

Consistent with the conclusions of Ofgem's decision letter of 28 April 2016 in respect of the legal and regulatory framework relating to the gas central data service provider, SSC A15A would require users of CDSP services to enter into a service agreement with the CDSP (paragraph 6(c)(iii) refers). However, we are concerned that paragraph 6(a) seeks to go further, specifying that the service agreement with the Agent (presumably the CDSP) is to be the Data Services Contract. This drafting is unnecessarily prescriptive, and assumes a particular outcome from the UNC FGO Workgroup discussions and Ofgem's future decision in respect of UNC Modification Proposal 565 "Central Data Service Provider – General framework and obligations" ("MOD 565").

We note also that the proposals in paragraphs 6(a) and 6(c) would potentially create differences in obligations for those users of CDSP services who are signatories to the UNC and those who are not Code parties. Given that some CDSP services are provided to both UNC and non-UNC signatories, it is unclear how co-operative funding and governance arrangements that position risk and reward across all users of CDSP services would be given practical effect.

4) CDSP Charging Methodology

We welcome the withdrawal of the previous proposals that would have required submission to the Authority of the draft CDSP Charging Methodology (and associated draft CDSP Charging Statement) for a period of up to 42 days prior to implementation. A Charging Workstream has been established under the governance of the UNC FGO Workgroup, and we anticipate that the outputs of this Workstream, including the draft CDSP Charging Methodology, will be presented to Ofgem as part of the MOD 565 papers.

We note that paragraph 6(c)(iv) proposes that users would pay for CDSP services used in accordance with the CDSP Charging Statement. We propose that the reference to "used" is removed, so that this does not place an undue constraint on the development of the CDSP Charging Methodology by the Charging Workstream.

5) CDSP Budget

We agree that the production of an annual CDSP budget in consultation with users of CDSP services is a key feature of the co-operative funding and governance model.

Paragraph 8(c) refers to the budget being "in respect of the appointment and ongoing operation of the Provider". We consider that the focus should be a little different, and that the intention should be to establish a budget for the delivery of CDSP services.

Whilst we recognise that it would be appropriate for users of CDSP services to be protected from the consequences of a CDSP Budget that is not “fit for purpose” (paragraph 6(d) refers), it will be important to ensure that there is a collective confidence in the CDSP Budget. This would provide the CDSP with certainty of funding to meet users’ service requirements, and would provide users with certainty of the extent of their commitment to fund the CDSP. As such, we would encourage Ofgem to consider how SSC A15A might be drafted so as to set a suitably high bar for an appeal to be valid for submission to the Authority.

We would welcome clarification that, in accordance with the provisions of paragraph 12, any amendment to the CDSP Budget would be prospective only.

We note that the references in paragraph 6(d) to paragraphs 7(c) and 7(b) should be to paragraphs 8(c) and 8(a) respectively.

With regard to amendment to the CDSP Budget following Authority consideration of the appeal and the issue of a direction, the reference in paragraph 9 to paragraph 6(b) should be to paragraph 6(d).

6) Appointment of Directors

We note that paragraph 5(a) makes provision for users of CDSP services other than the GTs to be able to nominate Directors to the Company Board. For the avoidance of doubt, the drafting should make it clear that this right should be available to GT and non-GT users alike.

7) Annex 3 – Consequential Licence Changes

We note that each of the proposed consequential amendments refers to SSC A15A as ‘Agency’, whereas this is defined in Annex 2 as ‘Central Data Service Provider’.

The reference in SSC A14A paragraph 1(b) to the ‘AS agreement’ needs to be amended, as the ‘AS agreement’ will lapse when SSC A15 ceases to have effect.

We are happy for you to publish this letter and the accompanying Appendix. If you would like to discuss further any aspect of our response, please contact Martin Baker, External Affairs Manager (martin.baker@xoserve.com; 0121 623 2692) in the first instance.

Yours sincerely

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Appendix 1 – Prevailing Service Contract Framework and Example Services

Contract		Services	Funding	Example
Agency Services Agreement with GTs	No Framework contracts with Shippers	Core Services for which GTs have UNC responsibilities and regulatory licence obligations, and including GT operational requirements that enable and support the discharge of those obligations	Xoserve is funded by GTs through their allowed revenues set under periodic price control reviews	Provision and maintenance of GT Supply Point Register (UNC Section G)
		User Pays Services for which GTs have UNC obligations	Charges are cost reflective and based on the utilisation of the service. For the purposes of GTs' price controls, these services are excluded services.	Administration of Must Reads (UNC Section M)
	Framework Contracts with Shippers	User Pays Services for which GTs do not have UNC obligations		Operation and maintenance of Supply Point Information Service (GT Licence Condition A31)
Other bilateral contractual arrangements		Services are individually tailored to meet specific customer requirements and are outside the scope of GTs' UNC responsibilities and regulatory licence obligations	Xoserve receives payment directly from those parties that request the services	Provision of IX services to Meter Asset Managers