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Dear David

Consultation on proposals to implement aspects of Regulation (EU) 2017/460, the European Network Code on harmonised transmission tariff structures for gas (TAR NC) October 2017

We thank you for the opportunity to comment on the proposals set out in the consultation document. This response is provided on behalf of RWE Supply and Trading GmbH and RWE Generation UK plc.

Although we agree that NGG as TSO is probably best placed to perform and complete the tasks set out in Annex 1, we are very concerned with Ofgem's proposed consultation process to implement the charging arrangements. We do not support the proposals set out in this consultation.

We do not agree with aligning the consultations required for UNC Modification 0621 and Article 26 of TAR NC into a single consolidated consultation document. The UNC consultation will consider matters related to those set out in Article 26 but they are necessarily different as they serve different purposes. Where a number of alternative UNC proposals are raised these will make producing a consolidated document even more problematic.

The UNC modification process is clear. After development of, and consultation on any proposals, workgroup participants vote on how the proposals meet or better facilitate the UNC Relevant Objectives and the Draft Modification Report is sent for industry consultation. Following the consultation, a Final Modification Report is put to the UNC panel for consideration and vote against the same UNC objectives, before making their recommendation. Where self-governance criteria are not met, the implementation decision is taken by Ofgem.

The scope of the Article 26 consultation is broader than the UNC consultation and many of its requirements are beyond the vires of the UNC governance processes. Where they relate to matters of compliance, these should properly be considered by the NRA. Its intended consultees, ACER and NRAs of directly connected member states, are a different constituency than those responding to a UNC consultation.

It is not clear to us that a single consolidated consultation document for two discrete processes will actually have the positive impact on the timetable that Ofgem contend, particularly when considering the nature and scope of the conflated consultation that industry will be required to respond to.

The proposal also signals a significant step away from established practice. The process has been that following the Panel recommendation, the Authority will set out a draft impact assessment and rationale for a minded to decision based on the

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consultation option most likely to better facilitate the UNC objectives and further Ofgem's principal objective and wider statutory duties. The Impact Assessment therefore forms an integral part of Ofgem's decision making process for Code changes.

The UNC process cannot consider Ofgem's wider statutory duties. Consequently a sequential approach is required because the UNC governance process only permits assessment against the Relevant Objectives and cannot assess the proposals against Ofgem's wider statutory duties. This is an important aspect of change governance. For example, in the case of P229¹, the Authority rejected implementation because it would not be consistent with the Authority's principal objective and statutory duties, although modification proposals would better facilitate the achievement of the applicable objectives of the BSC. As 0621 proposes a more fundamental review of charging than that proposed under P229, it is not unreasonable to assume that this wider assessment may be needed to decide between a number of compliant proposals. Ofgem needs to explain why moving away from this approach is justified in this case.

Adopting a sequential process where Ofgem's minded-to decision follows the UNC process is more consistent with the consultation requirements set out in TAR NC. Article 26 refers to "the final consultation" that is issued "prior to the decision referred to in Article 27(4)". The decision in Article 27(4) is the motivated decision on, inter alia, the Reference Price Methodology, technical and other parameters within the methodology and reference prices. It seems to us that the UNC consultation cannot be the "final consultation" in this context as this will not form the basis for the motivated decision as there are expected to be a number of options that would produce different reference prices. Furthermore, there are a number of areas in the TAR NC that require NRA justification, including multipliers and the approach to Revenue Reconciliation. We would expect clarity on these areas early in the UNC consultation process. The motivated decision will follow the Ofgem Impact Assessment that will contain their preferred Reference Price Methodology and is compliant with the TAR NC requirements. This is the consultation that should be considered by ACER and the NRAs of directly connected member states.

If you require any additional information or wish to discuss any aspects further, please do not hesitate to contact me

Yours sincerely

By email so unsigned

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¹ P229: Introduction of a seasonal Zonal Transmission Losses scheme