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Dear Julian

UNC Modification Proposal 0048: 'Preparation of Legal Text for Users Modification Proposals'

Thank you for your invitation seeking representations with respect to the above Modification Proposal.

National Grid Gas plc (UK Distribution) ("Distribution") is of the opinion that this proposal should not be implemented. It is our opinion that implementation would not promote the efficient discharge its obligations relating to the implementation and administration of the Unified Network Code.

Distribution believes that current rules and process are adequate regarding the production of legal text. Currently, a Transporter is required to provide legal text with its modification proposal and, additionally in the case of a Shipper proposal, the Transporters are required to provide text where either the modification panel supports implementation, or where they are so instructed to provide text by Ofgem, as part of Ofgem's consideration of the modification report. Parties have the right, (under UNC Modification Rules paragraph 6.2.1(k)), to provide indicative legal text at any stage of the development phase and include it as part of the consultation. These current rules incentivise the production of well thought-through proposals progressing on to the consultation phase.

Where a Transporter raises a modification proposal it has to consider the "whole run" costs of doing so, which would include the costs of providing the legal text. In order to minimise the cost, it should seek to establish, in as much detail as possible, business rules prior to commencing legal drafting although in many cases additional input is required from the proposer to finalise the legal text. The drafting process highlights Distribution's concerns that, production of text to accompany a proposal to which the Transporter may be opposed puts the Transporter lawyer into a potential conflict of interest situation they must take instruction from their client and not other parties. This does not apply at the later stage or where Ofgem request the text. To prevent such conflict of interests, a Shipper could commission its own drafting and thereby align rights and accountability.

Where the proposal is complex and a number of iterations of legal drafting are required, Distribution is concerned that the transporter lawyer may need to take further instructions and the time required to produce the Draft Modification Report would have to be extended. In reality, in many cases the consultation could have proceeded without text, which would seem to be a more efficient use of resources and time.

Distribution are also concerned that to provide legal for every proposal establishes a regime that cements in place rights for Shippers, and obligations for Transporters, without aligning this with accountability. This might result in the imposition of considerable additional costs for the Transporter with no control over the frequency and extent of such costs. This would not seem to be consistent with a regime where a party should bear the costs associated with its actions or licence obligations.

In any event, irrespective of the existence of legal text, Ofgem should have sufficient detail to make a judgement on a proposal against the relevant objectives; otherwise the development and report phases have failed to deliver an adequate consultation. If Ofgem do not have sufficient information to make a decision as to whether the proposal furthers the relevant objectives, then by default, they must say it doesn't and should reject the proposal. Distribution firmly believes that legal drafting should not be a replacement for quality development and it should not be used to draw out commercial issues as part of the consultation. However, in the unlikely event the implementation decision could sway on the existence of legal text, Distribution support its production and believe it is wholly appropriate and correct that Ofgem is able to direct on this matter.

Distribution is also concerned about the nature of the vote being undertaken by the panel. Implementation would give the panel a role and a type of vote which at present does not exist. Currently, the panel only vote on process matters, or on whether or not to implement, and these in theory at least, should not be bi-partite votes. A vote that could stop the production of legal text for a particular proposal would be different in nature to the other panel votes: with this one, there would be no positive aspect for the Transporters and no negative aspect for Shippers. Why would a Shipper ever vote for the Transporters to be relieved of their obligation to provide text? All the logic, as well as the commercial and contractual incentives, dictates that it would be far better to leave the decision to direct the production of legal text in the hands of Ofgem.

In summary, Distribution believes that implementation would establish a regime that would inappropriately enable Shippers to impose costs on Transporters, to a degree which is both indeterminate and uncontrollable. Such costs have not been included in Transporters price controls. Distribution believes the modification process would work less efficiently, and provide for inferior governance arrangements, than is currently the case, since it would introduce the additional bureaucracy of another panel vote and would lead to time delays because of requirement to provide Draft Modification Reports containing legal text in virtually all cases. Resources should be targeted on the proposals most likely to be implemented and Ofgem is the best judge in this respect. Consequently, Distribution believes that the proposal should not be implemented since to do so would not further the relevant objective identified previously.

Yours sincerely,

Declan McLaughlin