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UNC Modification Panel Secretary
Joint Office of Gas Transporters
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30th October 06

Mod Ref 0109
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Dear Julian,

Representation for Modification Proposal 0109 "Acceptable Security Tools available to Users for Transportation Credit Arrangement"

On behalf of RWE npower, I would like to thank you for the opportunity to respond on Modification Proposal 0109. RWE npower does not support the implementation of this modification proposal as we believe it has not provided detailed prescription in defining the acceptable security forms.

Despite the fact that this mod seeks to implement one of the recommendations from the "Best Practice Guidelines" we believe that its implementation would not facilitate the securing of effective competition between relevant shippers. This modification proposal does not make provisions for non UK domiciled companies and failed to provide detailed definitions to the acceptable instruments that are required to Users for Transportation Credit arrangement.

In principle, the mod could provide clarity but we believe falls short of doing that by failing to provide specific details to various instruments that would be preferable, or acceptable. I have listed below some of our concerns, and made some suggestions to the provided legal text within the draft modification report.

"Deposit Deed" the words "in a form acceptable to the Transporter" are not acceptable as it allows the Transporter to dictate its terms. We will however prefer the definition to refer to a specified form of some sort.

RWE npower believe that the proposed legal text for "Enforceable" should be altered so that the opinion is limited to dealing with enforceability issues arising

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from cover being issued by a non UK company. This will deal with the legality of the company's constitution and compliance of the guarantee with that constitution, and the compliance with the enforceability requirements of the jurisdiction of the company's domicile. It therefore would not deal with the effectiveness of the wording of the guarantee as such. It would be preferable if a suggested draft opinion or at least a statement of the issues to be addressed by the opinion could be agreed and specified as dealing with the appropriate issues.

Yet again, the definition provided for "Letter of Credit" could generate disputes as it does not clearly define what form is required. Disputes could be avoided should a standard form be specified within the draft modification report and agreed upon by all parties before implementation.

Additionally, the defined term of "Guarantee" within the draft modification report refers to an 'on demand irrevocable guarantee or performance bond' is unacceptable as it indicates a strict obligation on Users to pay without proof of debt. RWE npower believe that this should be a normal guarantee requiring reasonable proof of default. Also, a guarantee is rather different from a performance bond thus a separate definition of performance bond would be preferable.

In addition to the above, we are concerned about the word "irrevocable". This is unacceptable and we would prefer the forms of 'guarantee' and 'performance bond' be agreed and predetermined so that there is certainty as to the requirements and obligations expected. These requirements are what we would be looking for in a specified form. Based on current drafting in the proposal, "Guarantee" would still have to refer to one provided by a Qualifying Company or Parent Company.

RWE npower would like to suggest that "Prepayment Agreement" form is supposed to be specified within the draft modification report to provide some clarity.

"Parent Company" as defined in the draft modification report needs to be altered to provide standard form that includes foreign companies. RWE npower suggests that by introducing a new definition of an Entity which would replace the words "a public or private company within the meaning of section 1(3) of the Companies Act 1985", which could then be shortened to:

"Parent Company" shall mean an Entity with a long term debt rating of at least Ba3 provided by Moody's Investor's Services or equivalent rating by Standard and Poor's Corporation."

And Entity would be defined as:

"Entity" means a government or state or division thereof, government or state agency, corporation, partnership or such other entity as the context may require which with respect to a User, directly or indirectly through one or more

intermediaries' controls the User. The term "controls" means the possession, directly or indirectly through one or more intermediaries, of more than 50% of the outstanding voting stock of, or the power to direct or cause the direction of the management policies of, the User, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.

Finally, the last sentence at the end of the definition of "Qualifying Company", stating "A User may extend its exposure beyond its Unsecured Credit Limit ..." needs separating out as it is a general provision. If the definition of 'Performance Bond' is separated out of the definition of 'Guarantee' as suggested above, then it would be added as a separate item in the list of types of security.

For reasons highlighted above, RWE npower will not be supporting the implementation of this modification proposal. The modification Proposal with the proposed legal text does not facilitate the securing of effective competition between relevant shippers.

Should you like to discuss the above please do not hesitate to contact me

Yours sincerely,

Simon Howe
Gas Network Codes Manager