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**Re: UNC Modification Proposal 0286 & 286A “Extending Modification Panel Voting Rights to [a] Consumer Representative”**

Dear Bob

Thank you for the opportunity to comment upon these Modification Proposals.

Wales & West Utilities Ltd (WWU), as we have stated on numerous occasions, are fully supportive of consumers and consumer representatives playing an active role in UNC matters. Such participation is vital in ensuring that all parties are aware of, and take into account, their views and, more importantly, that Ofgem are fully informed of such views when the Authority has to consider decisions on Modification Proposals.

However, we do not believe that either Modification Proposal 0286 or 0286A (“the Alternative”) are the most appropriate way to further the involvement of consumers / consumer representatives. We are therefore **not supportive** of the implementation of either Modification Proposal 0286 or 0286A. We have provided further comments on each Modification Proposal below and hope that this representation is considered by both the Modification Panel and the Authority when making either a recommendation or a decision on whether either Modification Proposal should be implemented.

The Proposals

The original Modification Proposal 0286, raised by EDF Energy, has been designed to be as straightforward as possible as it simply changes the current consumer representatives defined within the Modification Rules from non-voting members to voting members. Based on the simplicity of this it was deemed by the Proposer, and a small majority of the Modification Panel, that it should be sent directly into the Consultation Phase without any discussion at an appropriate industry forum (e.g. Distribution Workstream, Transmission Workstream, Governance Workstream or the Gas Customer Forum). This decision meant that any issues, concerns or unintended consequences could not be addressed by the industry. This ultimately led to an alternative Modification Proposal (0286A) being raised by British Gas Trading Ltd) in an attempt to address

24 hour gas escape number  
Rhif 24 awr os bydd nwy yn gollwng

**0800 111 999\***

\*calls will be recorded and may be monitored  
caiff galwadau eu recordio a gellir eu monitro

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some of these concerns. For a Modification Proposal that is supposedly based upon the outputs of the Ofgem Code Governance Review, this is far from an example of “good governance”.

Standard Special Condition A11 (“Network Code and Uniform Network Code”) of the gas transporter licence contains requirements for the transporters to provide for the participation of parties that are not signatories to the UNC (this includes consumers and consumer representatives). The licence and UNC Modification Rules require that the views and representations made by any party are provided to the Authority and also provide for relevant persons to be designated as a “third party participants” giving such persons the ability to raise Modification Proposals. The National Consumer Council already has such a designation and are, so far, the only non-code party to be designated as such by the Authority.

The transporters, via the Joint Office of Transporters, go to great lengths to ensure that relevant non-code parties are kept informed and included on all UNC business, including Modification Proposal representation, and aim to make the process as inclusive as possible. It is also worth mentioning that the existing Modification Panel consists of 17 members, these are:

- 5 Users’ representatives;
- 5 Transporters’ representatives;
- 1 Terminal Operators’ Representative;
- 1 Independent Suppliers’ Representative;
- 1 Independent Transporters’ Representative;
- 2 Consumers’ Representatives; and
- 1 Ofgem Representative; and
- The Panel Chairman

All Modification Panel members are free to express their individual views during Modification Panel meetings and, if they so wish, can have their own individual views on whether a Modification Proposal should be implemented or not recorded and included within the information that is submitted to the Authority.

The current Modification Rules only include the Modification Panel Representatives that are signatories to the UNC as “voting” members; these are the 5 Users’ and 5 Transporters’ Representatives. The combined view of these 10 representatives is issued to the Authority although it does not influence the Authority decision when considering the merits of a Modification Proposal (as decisions are based upon measures such as the relevant objectives, impact on consumers and the facilitation of effective competition).

The only material purpose of the recommendation by the 10 voting members is as a mechanism to determine whether an appeal against an Authority decision can be made to the Competition Commission. Such appeals are made under The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (effective under Section 173 of the Energy Act 2004). Appeals may only be made by materially affected parties (or their representatives) when a decision has been made by the Authority that did not accord with the majority view of the Modification Panel.

Implementation of either of these Modification Proposals, in an attempt to allow consumer representatives to have a ‘greater voice’, will have the unintended consequence of significantly impacting on the mechanism for the right of appeal. We do not believe that this was ever the

intended outcome of the Ofgem Code Governance Review or a desire of consumers and consumer representatives.

The National Consumer Council is a statutory organisation established under the Consumers, Estate Agents and Redress Act 2007. One of their core functions is the “representative function” as determined by section 8(1) of the Act;

**(1) The Council may –**

- (a) provide advice and information to persons within subsection (2) about consumer matters;**
- (b) make proposals to such persons about consumer matters; and**
- (c) represent the views of consumers on consumer matters to such persons.**

**(2) Those persons are –**

- (a) any Minister of the Crown or government department;*
- (b) the Scottish Ministers;*
- (c) the Welsh Ministers;*
- (d) any regulatory body established by or under an enactment;**
- (e) the European Commission or any other international organisation;*
- (f) any other person whom the Council considers might have an interest in the matter in question.*

Ofgem is the Office of the Gas and Electricity Markets and protecting consumers is their priority function. Ofgem is governed by the Authority that, in the same way as the National Consumer Council, is a statutory body (established under the Gas Act 1986 and the Utilities Act 2000). Again, similar to the National Consumer Council, the Authority’s principal objective when carrying out its functions under the Gas Act is to protect the interests of existing and future consumers.

It is therefore wholly inappropriate for the National Consumer Council to carry out a role within the UNC Modification Panel that is outside the remit of its statutory representative functions but instead has a significant impact on a party’s ability to make an appeal to the Competition Commission in relation to an Authority decision. This arrangement would be tantamount to the Authority themselves having the ability to influence whether an appeal to the Competition Commission could be made in relation to one of their own decisions.

### User Pays

We agree with both Proposers that neither of these Modification Proposals should be classified as User pays Modification Proposals as they do not create or amend a User Pays Service.

### Relevant Objectives

We disagree with both Proposers as we do not believe that implementation of either Modification Proposal will better facilitate the achievement of the relevant objective A11(c). The Proposer of Modification Proposal 0286 believes that implementation will lead to the facilitation of paragraph 9(f) of Standard Special Condition A11. This is clearly not the case as paragraph 9(f) contains the

requirement that the modification procedures shall provide for the consideration of any representation relating to a modification proposal made by, amongst others, any person likely to be materially affected by its implementation.

The Modification process already allows for this, all representations made against a Modification Proposal are, on a consistent and equal basis, included within the Final Modification Report and are provided in full to the Authority. By making Consumer Representatives voting members the fulfilment of this requirement will be unaffected.

The Proposer of Modification Proposal 0286A states that implementation would also better facilitate the achievement of relevant objective A11(f); the implementation and administration of the uniform network code. As neither of the Modification Proposals are consistent with the Ofgem Code Governance Review Final Proposals it is likely that further Modification Proposals will be required in relation to the status of Consumer Representatives. We therefore believe that implementation of either Modification Proposal would effectively worsen the facilitation of this relevant objective as it would lead to inefficient administration of the UNC.

#### Contractual Risk for Transporters and Users

We agree with both Proposers that implementation of either Modification Proposal will increase the contractual risk for both Users and Transporters. As explained above, the existing measure used for determining the right of appeal to the Competition Commission is based upon the majority view of the User and Transporter members of the Modification Panel, as they are representative of the contractual parties. We believe it is inappropriate, and unjustified, for a non-code party, that simply wishes to express a view on implementation should have a consequential impact on the right of appeal. Such a consequence may even be detrimental to the participation of Consumer Representatives as they may not feel it appropriate to express their views, in line with their statutory duties, knowing that it may have significant commercial consequences for Users and/or Transporters.

#### Implications of the Implementation for other relevant persons

We disagree that implementation of either Modification Proposal would increase visibility of consumer views. The National Consumer Council, as one of its core functions, has a responsibility to ensure that Ofgem / the Authority are advised on the impact that implementation of a Modification Proposal may have on consumers. The ability to “vote” as part of the Modification Panel will simply record whether the Consumer Representative is supportive of the implementation of a Modification Proposal. If the Consumer Representative does not vote in support of implementation, for example due to no interest, then this would be incorrectly seen as a lack of support and of potential detriment to consumers. This would therefore not be a reliable mechanism for increasing the visibility and voice of the consumer.

#### Advantages

- ***Increases visibility of consumers interests in modification process (0286 & 0286A)***

As explained above, this advantage will not materialise through implementation of either Modification Proposal.

- ***Gives consumers a greater say in Modification Panel business (0286 & 0286A)***

Implementation of either Modification Proposal would give Consumer Representatives a greater say in determining whether an appeal can be made to the Competition Commission in light of a decision taken by the Authority. As explained above, we believe this to be wholly inappropriate.

Modification Proposal 0286 would also allow for Consumer Representatives to be a voting member of the Uniform Network Code Committee. This level of representation has not been discussed as part of the Ofgem Code Governance Review, within any UNC Workstreams and has not been justified within the Modification Proposal. We therefore disagree that implementation of either Modification Proposal will deliver such a benefit.

- ***Brings UNC into line with [best practice in (0286 only)] other industry codes (0286 & 0286A)***

We disagree that by bringing the UNC in to line with other industry codes is a demonstration of alignment with best practice. Because arrangements differ in more than one other industry code this does not automatically qualify as best practice. We also do not believe that uniformity across industry codes should be a desire unless there has been sufficient justification for such change.

- ***[Possibly (0286A)] consistent with Ofgem's Code Governance Review (0286 & 0286A)***

Since both these Modification Proposals were raised, Ofgem have published their Code Governance Review Final Proposals. It is now clear that neither Modification Proposal is entirely consistent with the Final Proposals and, if either were to be implemented, further Modification Proposals relating to Consumer Representation will be required. It is for this reason that we believe both Modification Proposals should be either withdrawn by the Proposers or rejected by the Authority.

Hopefully both the Modification Panel and the Authority will find this representation useful when determining the outcome for both of these Modification Proposals. In the meantime, if anyone has any questions relating to this representation then please do not hesitate to contact me.

Yours sincerely

{By email}

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