

Mr. Bob Fletcher
UNC Panel Secretary
Joint Office of Gas Transporters
1st Floor South
31 Homer Road
Solihull
West Midlands
B91 3LT

5 May 2010

Dear Bob,

RE: Modification proposal 0286/A: Extending Modification Panel Voting Rights to (a) Consumer Representative(s)

Thank you for the opportunity to respond to this consultation. British Gas Trading does not support 0286, and offers qualified support for 0286A.

British Gas Trading believes that a UNC Panel which is appropriately constituted will represent and champion the needs of the whole range of end consumers, and we believe that consumer impacts are foremost in the minds of Panel representatives when discussing the merits of every proposal and making decisions on implementation recommendations.

That said, we also believe that a greater consumer representative voice at Panel discussions may be helpful in ensuring all aspects of consumer impacts are fully considered. Against this, however, must be weighed the impact that the appointment of consumer representative voting seats as proposed could have on the outcome of a Panel decision, and the knock-on impact on parties' appeal rights.

We believe that it may be possible to structure a Panel process whereby consumer representatives are able to fully engage and have their views reflected in debates, final decisions and Final Modification Reports without impacting upon appeal rights. One example would be to ring-fence the consumer representative vote on final recommendations such that it was transparently presented alongside other voting members' votes, but did not impact upon appeal rights. Under such a scenario it may, for example, be that Panel representatives were much more comfortable with a significantly increased role for consumer representatives (e.g. a greater number of consumer representatives) than is currently proposed.

The importance of appeal rights must not be under-estimated in this respect, both in terms of bringing pressure to bear over the rigour with which Modification Proposals are pursued, and as a check and

balance where parties believe that erroneous decisions have been made. Anything which impacts upon these appeal rights, therefore, as do 0286 and 0286A, must be considered extremely carefully.

0286

The original proposal 0286 proposes that the two non-voting consumer representative positions currently able to be appointed to the UNC Panel should become voting positions. British Gas Trading's reservations in supporting this proposal are set out below.

- The appointment of up to two voting consumer representative positions has the potential to give rise to a greater number of occasions where the consumer representative vote sways a Panel outcome, and therefore possible rights of appeal.
- 0286 imposes no obligations upon the NCC/Consumer Focus to actually take any part in Panel business themselves, but rather provides the option for the NCC/Consumer Focus to appoint as voting representatives consumer representatives other than themselves. To this end, while the NCC/Consumer Focus may be seen as impartial (and may even have a statutory requirement to act in an impartial manner) these attributes may not necessarily apply to the same extent to other consumer representatives who NCC/Consumer Focus may choose to appoint to the Panel. It is, for example, easy to identify organisations which may qualify as consumer representatives but who are strongly aligned to one particular market sector or other and whose voting preferences are likely to reflect that market sector. BGT believes that safeguards are required to prevent unduly weighting the balance of the UNC Panel.
- Given the right of the NCC/Consumer Focus to appoint representatives other than themselves, it is not clear what is meant by "consumer representative" since at face value this could be an extremely broad definition which may include less than appropriate people and/or organisations. It is also not clear how the NCC/Consumer Focus might go about deciding which consumer representatives they might appoint to the Panel in the event that they do not wish to take up both positions themselves. It would seem only right that a fair, open and transparent appointment process were undertaken in such an event.

0286A

British Gas Trading raised 0286A in recognition that greater consumer representation on the UNC Panel may be desirable and indeed required by the Ofgem code governance review, but also in order to achieve these aims while mitigating some of the problems that we foresee should 0286 be implemented. In the main, the differences between the two proposals are threefold:

- First, we propose to restrict the number of voting consumer representative positions to one. This is in an attempt to limit as far as possible the number of occasions where appeal rights are restricted as a result of the consumer representative vote. However, as set out above, this is not an attempt to stifle consumers' views in respect of Panel business; indeed we would be open minded to considering greater consumer representative input to Panel business where this did not have the potential to impact upon appeal rights.
- Second, we propose that NCC/Consumer Focus should directly take up the Panel position themselves. We believe that NCC/Consumer Focus is more assuredly impartial than other bodies that may be, or may claim to be, consumer representatives. Further, requiring direct rather than indirect NCC/consumer Focus representation avoids the problems of implementing an appropriate appointment process for the position(s) not taken directly by NCC/consumer Focus.

- Thirdly, we do not believe that it is appropriate for consumer representatives to have a voting role in respect of modification proposals that are subject to self governance arrangements, nor for matters that are reserved for the Uniform Network Code Committee. We believe that such matters are, and should remain, the preserve only of Transporters and Shippers.

Our qualified support for 0286A stems from the fact that we believe with further development, a solution could be found and agreed which provides greater consumer voice and voting rights without impacting on essential appeal rights.

Please contact me if you would like to discuss this response.

Yours sincerely,

Chris Wright
Commercial Manager