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Dear Tim

**EDF Energy Response to UNC Modification Proposal 0188 & 188A: “Introduction into the UNC of the Agency Charging Statement (“User Pays”)**

EDF Energy welcomes the opportunity to respond to these modification proposals. We support the implementation of both proposals, but believe modification proposal 0188A better facilitates the relevant objectives over 0188.

EDF Energy raised modification proposal 0188A in response to numerous discussions that took place at the User Pays Implementation Group regarding the Governance of User Pays. We believe that this proposal addresses the concerns expressed by Shippers regarding the Governance of User Pays, and reflects the view of the majority of Shippers at these meetings that it would be beneficial to include the documents associated with User Pays as ancillary documents to the code.

EDF Energy remains concerned with the process that these proposals and other proposals have followed. In particular we note that both 0188 and 0193 have been raised to reflect other regulatory changes that have not been enacted yet. This was an issue noted by the Ofgem representative at the Panel meeting on 17 January 2008, and it could be questioned whether it is economic and efficient to undertake a consultation process prior to regulatory change that is giving effect to this change. Whilst we recognise that this may be one area for the Governance Review to investigate, we believe that in the future it would be prudent for any Licence Condition changes to be accompanied with sufficient notice to allow the industry to follow an appropriate process. However we also recognise the actions that Ofgem has taken to give increase foresight of the licence changes required to enact the GDPCR and this is a significant improvement over the TPCR process where licence changes were enacted with retrospective effect.

EDF Energy has therefore found it difficult to judge whether either proposal meets certain relevant objectives, and in particular Standard Special Condition A11.1 (c): “the efficient discharge of the licensee’s obligations under this licence”. Proposal 0188 references paragraphs 7 to 11 of Standard Special Condition A15 of a Gas Transport’s Licence, however the Standard Special Condition A15 published on Ofgem’s website<sup>1</sup> only has 6 paragraphs. In fact paragraphs 7 to 11 of Standard Special Condition A15 only exist in the draft licence conditions, and now include paragraph 12. These requirements are still only at the draft stage, and whilst Ofgem has indicated that the final proposals are due in February for

<sup>1</sup> [http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=6551](http://epr.ofgem.gov.uk/document_fetch.php?documentid=6551)

consultation, as yet the industry still does not have sight of these final proposals. Whilst it is clear that Licence Conditions will be enacted to accommodate User Pays, at this stage it is not clear what these Licence Conditions will be, and therefore whether these proposals facilitate Standard Special Condition A11.1 (c). As Proposer of 0188A, we believe that our proposal should reflect any future licence condition, provided that the current drafting of this condition does not change significantly, however we would request that the Modification Panel, and Ofgem, consider whether a recommendation can be made without sight of the final licence conditions, and whether the outcome of this licence process may require a further consultation/consideration of these proposals.

We would further note that we do not believe that the implementation date of either proposal is now achievable. Whilst we recognise that the Agency Charging Statement (ACS) is subject to a separate consultation and Ofgem decision, the effect of both of these proposals is to reference the ACS in the UNC and in the case of 0188A incorporates this as an Ancillary Agreement to the code. However both of these proposals require a fully developed ACS, otherwise the UNC will reference a document that does not exist. Having thoroughly reviewed the ACS we do not believe that it is fit for purpose and requires further development and consultation before it is presented to Ofgem. The basis on which the charging levels have been calculated is unclear and as such does not permit parties to test the reasonableness of the proposed charges. We therefore do not believe that the 1 April 2008 implementation date is achievable, and as Proposer of 0188A we would recommend that the implementation date is changed to coincide with the implementation of a fully developed ACS by Ofgem.


Despite these issues EDF Energy recognises that as a result of the GDPCR Standard Special Condition A15 will be changed, and the UNC will be need to be changed to give effect to the ACS at some point in the future we therefore believe that:

- Provided Standard Special Condition A15 does not change significantly from the current draft version then both proposals should meet Standard Special Condition A11.1 (c) - the efficient discharge of the licensee's obligations under this licence.
- Modification Proposal 0188 and 0188A will also further Standard Special Condition A11.1 (d) the securing of effective competition, as they will ensure that costs are targeted at those who incur them. 0188A will facilitate this condition further by creating a level playing field for Shippers to propose changes to the associated documents and so help to ensure that these are developed to the benefit of Shippers as well as Gas Transporters. This should help to reduce the administrative burden on Shippers and ensure that the contracts promote competition.
- Proposal 0188A will also facilitate Standard Special Condition A11.1 (f) the promotion of efficiency in the implementation and administration of the network code as it will bring the associated documents under proper code governance. We believe that this will ensure any proposed changes to the ACS, or associated documents, are subject to a Governance process.
- Whilst we recognise that 0188A will reallocate some of the risk between parties compared to proposal 0188, we believe that the impact of this is minimal and will return the contractual risk levels to those seen prior to the introduction of User Pays. In particular we note that under the new contract the service availability has been amended to include a "core hours" provision which does not exist in the SPAA Schedule 23. It is unclear how the "core hours" provision will be enforced and how this aligns with the requirement to provide service availability from 06:00 until 10:00 six days a week. Including the associated documents under the code would assist with ensuring that changes to service provision are communicated in a transparent manner to the industry. We would further note that placing these contracts under the code would reduce the Gas Transporters' risk associated with legal action as a result of unfair contract terms.

- Conversely we believe that modification proposal 0188 will transfer risk from Transporters to Shippers as it seeks to redefine the contract terms that services are provided upon.

I hope you find these comments useful, however please contact me should you wish to discuss these in greater detail.

Yours sincerely

A handwritten signature in black ink that reads "Stefan Leedham".

Stefan Leedham  
Gas Market Analyst  
Energy Regulation, Energy Branch