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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 modification proposal 0188A and do not support implementation of modification proposal 0188.

Modification Proposal 0188

Modification Proposal 0188 has the effect of referencing the Agency Charging Statement (ACS) within the code, and so gives effect to this charging statement in relation to “code services”. The proposal also removes references to the charging arrangements for the must read service, thereby ensuring that Shippers are not exposed to the risk that they are charged twice, whilst removing the risk from Transporters of “double governance” of these charges. However the ACS also contains provisions for the charging of non-code related services which will be governed by a separate “contract”. EDF Energy therefore welcomes this additional opportunity to provide comments as we have had an opportunity to review both of these documents and the proposed licence changes, and this has had a material impact on our response.

EDF Energy has serious concerns with both the ACS and the “contract” that xoserve has provided to the industry. In particular we would note that the ACS does not appear to be fully developed, and is not cost reflective. Whilst it is recognised that the contents of the ACS is out of the scope of modification proposal 0188, we would note that the proposal will provide a reference to this document within the code, and so the contents of the ACS will have an impact on the relevant objectives.

In particular we would note that the Gas Transporters (GTs) have not proven that the ACS is cost reflective, relying on the fact that the Activity Cost Base (ACB) methodology determines costs and the fact that Ofgem had disallowed £3m. However it is not clear from the GDPCR Final Proposals whether Ofgem has determined that the £3m was efficiently incurred or not and so therefore does not guarantee that the charges are cost reflective. The same issue applies with the ACB which provides a methodology for the attribution of xoserve costs and does not determine whether the costs are efficiently incurred or cost reflective. If charges are not reflective then this will have two implications:

1. The GTs will not be complying with the proposed Licence Condition A15, which requires the GTs to create a charging methodology that is cost reflective. The ACS does not meet this condition, and so neither does this UNC proposal.

2. If charges are not cost reflective, then Shippers would be cross subsidising each other. As Shippers operate in different markets, with a varying number of Shipper licences then this will mean that there will be Shippers who will receive a subsidy and those who have to pay it. This will be detrimental to competition between Shippers.

Modification Proposal 0188A

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 Related Documents to the UNC.

In particular we would note that inclusion of the ACS as a UNC Related Document would allow Users to propose changes to the ACS, subject to the approval of the UNC Committee. This would allow Users and Transporters to develop a proposal that is cost reflective, and so ensure charges are targeted at those who incur them, and so facilitate the relevant Licence Conditions. We would also note that as part of the GDPCR Final Proposals Ofgem states that one of the requirements of User Pays is that: “the parties need to be able to agree how much the service should cost, and who should bear the cost associated with the service.” Inclusion of the ACS as a UNC Related Document would facilitate these discussions and ensure that industry agreement was reached on the value of the services and who should bear the cost for them. Under Proposal 0188 any decision to change the ACS would rest solely with the Gas Transporters and Ofgem would be required to make a decision on the proposal with no industry consultation to support this proposal.

In addition we would note that xoserve has provided a draft “contract” that Shippers will be expected to sign in order to receive any non-code User Pays service. EDF Energy has reviewed this “contract” and has numerous issues with this. In particular we would note that under this document xoserve has the right and ability to change any clause within the “contract”. However there is no requirement for Customers to accept these changes, and no ability for customers to propose changes to the “contract”. This is totally opposed to the principle of a contract whereby parties can be assured that any changes have to be mutually agreed. The effect of this is that Shippers are being expected to sign a document that can change at any point in time that could materially affect their rights and their ability to operate as Shippers. Further this document has been developed so that the liabilities on xoserve are very limited, whilst the liabilities on Shippers are unlimited. EDF Energy has provided a full list of issues with this contract to xoserve, and along with other Shippers has requested that the Joint Office make this available on their website¹. Creating this document as a UNC Related Document will ensure any changes proposed by xoserve are approved by Shipper representatives and so provide counter parties to this document some protection. Further proposal 0188A will allow Shippers to propose changes to the document to ensure a fair and balanced contract is developed subject to both parties’ approval – essentially providing the industry with adequate Governance.

¹ <http://www.gasgovernance.com/industryinfo/UPDocs/Jan08/>

Both Proposals

We would 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 a UNC Related Document. 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 and the “contract” 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 allow the ACS and “contract” to be developed.

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 two consultation processes 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.

Extent to which implementation of the proposed modification would better facilitate the relevant objectives:

- Provided that Standard Special Condition A15 is accepted by the GTs, then 0188 will have a neutral impact on SSC A11.1 (c) the efficient discharge of the licensee’s obligations under this licence. SSC A15.6 (a) requires the GTs to develop and prepare an ACS, and so proposals 0188 meets this objective. However SSC A15.10 requires the ACS charges to be cost reflective, and the ACS does not meet this requirement and so neither does 0188.
- Provided that SSC A15 is accepted by the GTs then modification Proposal 0188A conversely will help further relevant objective SSC A11.1 (c). By allowing Users to develop the ACS it will help to ensure that charges are cost reflective, and so will help the GTs meet SSC A15.10 and also SSC A15.6.
- Proposal 0188 will have a negative impact on SSC A11.1 (d) the securing of effective competition between Shippers. In particular we would note that the ACS is not cost reflective, and so 0188 will introduce arrangements that creates cross subsidies between Shippers that is not beneficial to competition.
- Modification Proposal 0188A will further SSC A11.1 (d) the securing of effective competition, between Shippers as it allows the industry to propose changes and develop the ACS so that it is cost reflective. This will ensure that costs are targeted at those who incur them.
- 0188A will also facilitate SSC A11.1 (d) by allowing Shippers to propose changes to the “contract”. This should ensure that a fair contract is developed, that will promote competition between Shippers. This should also 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

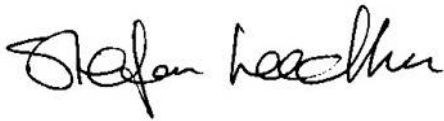
ensure any proposed changes to the ACS, or associated documents, are subject to a Governance process.

The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the code as modified by the Modification Proposal

- Modification proposal 0188 will transfer risk from Transporters to Shippers as it seeks to redefine the contract terms that services are provided upon. As noted above the contract terms greatly favour xoserve and the GTs, ensuring that their risks are limited, whilst exposing Shippers to an unlimited risk. We would also note that the terms under which these services are provided upon have also been changed, further limiting xoserve and the GT's risks.
- Proposal 0188A will return the contractual risk levels to those seen prior to the introduction of User Pays. Including the associated documents under the code would also 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.

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