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**Re: Proposed UNC Modification 188 and 188a: Introduction into the UNC of the Agency Charging Statement ("User Pays")**

Dear Julian,

I respond on behalf of the RWE group of companies. We have considered if it is worth responding to the modification proposal 188 as it appears to be a fait accompli now Ofgem have included the "User Pays" principle in the latest Gas Distribution Price Control. The principle of "User Pays" is one that we are not fundamentally opposed to, but the manner of its introduction leaves a great deal to be desired.

Ofgem have disallowed a certain amount of revenue from the Gas Distribution Price Control for the period 2008 – 2013 which begins from 1<sup>st</sup> April. The concept of User Pays is being introduced to recoup this shortfall, ostensibly in an efficient and effective manner, although there is no evidence to suggest that this will be the outcome. We could speculate as to what would happen if Ofgem were to not approve one of these Mods but since we don't believe that this will happen there seems little point in pursuing this line of thinking.

With respect to the Mod 188 we find there are some aspects which seem puzzling at best, and inconsistent, contradictory and erroneous at worst. The Draft Mod Report states *"ACS services would comprise two types of arrangement which will be referred to in this proposal as "code ACS Services" and "non-code ACS Services". A code service is an activity that is currently undertaken by a Transporter and is defined in the UNC; the code ACS services are located in UNC TPD Sections M3 and V2."* The AQ Review process is clearly defined in Section H.3 of the UNC. Use of the Spec Calc is an integral part of the AQ Review process but it is proposed that this would be a non-code ACS Service. It is our understanding that an appeal to an AQ will be disallowed unless the proposed AQ exactly matches that calculated by the Spec Calc process. Thus Shippers are effectively forced to use a process controlled by xoserve. We are lead to believe that the use of the Spec Calc will be a non-code ACS Service though we have difficulty in following the logic of this decision.

The Draft Mod report states "Development costs would be borne by the transporters. Ongoing operating costs associated with the delivery of each code ACS service would be included in the respective code ACS service charge." It goes on to

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state "...as a result of implementing this Modification proposal, introduction of a User pays invoice would need to be supported by new management information". What has not been made clear, either in this Mod Proposal or indeed, in any of the User Pays Implementation Groups, is how Shippers will have confidence that revenues and costs, which were previously subjected to regulatory control but are now beyond the scope of the Authority, will be accounted for.

There are no processes in place to ensure that costs can not be transferred from the regulated activities of the business to provide "User Pays" services. Also there are no provisions to manage any over or under recovery of revenue when compared to that which has been disallowed from the Distribution Price Control, which leads us to wonder if consideration should be given to some form of external audit to report on these newly unregulated services. As a minimum the revenue derived by DNs from "User Pays" services should be made known to shippers via the annual Gas Distribution Cost Review.

Our concerns are further heightened by the eventual release of the actual £ values for the services. For example we note that the unit cost for the Monthly Charge for an IAD Registered User Account is set at £40. Although we don't have actual numbers of accounts held by all Users, informal discussions would lead us to believe that the revenue collected by this activity alone will be in excess of £4.5 million. There are two consequences from this level of the charge. Firstly it may result in most Users reviewing the number of licences that they have in order to bring down the costs. However the consequence of this review may result in a poorer quality service to the end consumers or increased costs. Secondly it completely undermines any confidence that Users may have that charges are set at a level to recoup the disallowed revenue instead of being a method of making additional money.

The alternate mod 188a seeks to have the Contractual Documents as an Ancillary Document to the code. These Contractual Documents would include the Service Order, Service Schedule and Terms and Conditions. Whilst we applaud the desire for transparency we believe that this idea would have benefited from wider industry consultation.

Although we have reservations about many aspects of this whole change process, which in normal circumstances would lead us not to support the change, we recognise the futility of such a position and therefore neither support nor oppose these proposals.

If you wish to discuss any points raised in this response further, please do not hesitate to contact me.

Regards,

Simon Howe

Gas Codes and Agreements Manager