



Mr. Tim Davis
Joint Office of Gas Transporters
Homer Road
Solihull
West Midlands
B91 3QJ

E.ON UK plc
Westwood Way
Westwood Business Park
Coventry
CV4 8LG
peter.bolitho@eon-uk.com

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Dear Tim,

Re: Modification Propow 0198 “Extension of the Sunset Clauses for registration of Capacity at NTS Exit Points”

E.ON UK supports implementation of this proposal as we believe it would remove the uncertainty resulting from the absence of rules for Firm Capacity Applications for the period between 1 October 2011 and 30 September 2012. This will better promote competition in the shipping and supply of gas.

Nevertheless we question the need for National Grid Gas to put forward this proposal at this time as 116A (one of the two proposals remitted to the Authority for reconsideration following the Competition Commission appeal) removes the sunset clauses altogether is by comparison a better option. Modification proposal 116A ensures there are rules in place for the booking of capacity from 1 October 2012 onwards and that such arrangements would remain in place until changed by another Modification proposal.

If Modification proposal 0198 is in fact approved by the Authority it will be the third occasion on which such an extension of these sunset clauses has been granted. This alone surely demonstrates how inappropriate it was to include the sunset clauses in the UNC when the code was first designated by Ofgem in May 2005. We consider it was always wrong in principle to include such an arbitrary end date within the code.

E.ON UK plc
Registered in
England and Wales
No 2366970
Registered Office:
Westwood Way
Westwood Business Park
Coventry CV4 8LG

Our views on this matter are set out fully in our response to Modification 0046 and in the 0116V and 0116A appeal documents lodged with the Competition Commission. Nevertheless we would like to draw attention to the to a report cited by Professor Yarrow in the Authority submission to the Competition Commission namely the Final Report of the Mandelkern Group on Better Regulation dated 13 November 2001 which notes as a *“significant disadvantage”* of the use of sunset clauses that they are *“very expensive in terms of legislative time”* and that they *“increase uncertainty and thus have an adverse effect on the investment climate and on individuals’ confidence in the protection afforded them by regulation”*.

The report attributes the follow advantage to sunset clauses in that they *“force the administration and Parliament to look anew at the necessity for a particular regulation.”* Unfortunately this is not the way sunset clauses have been applied under the Uniform Network Code - the reverse is in fact the case - they have been used as a means of forcing industry parties to propose modifications to the code irrespective of their own assessment as to whether those modifications are appropriate, necessary or proportionate.

We would suggest that 116A should be approved instead of this proposal. This would ensure no further extension of the sunset clauses would be required should the case not be made for any of the “enduring offtake proposals” 116V, 116BV, 116CVV, 116VD, 195 or 195A.

Yours sincerely

Peter Bolitho
Trading Arrangements Manager