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5th February 2009

Re: UNC Modification Proposal 0213V "Introduction of User Pays Governance Arrangements into the UNC"

Dear John

Thank you for the opportunity to comment upon this Modification Proposal, I can confirm that we are fully **supportive** of its implementation.

1. The Modification Proposal

Modification Proposal 0213V has been raised to introduce the necessary governance framework into the Uniform Network Code (UNC) to facilitate the concept of a User Pays Modification Proposal. User Pays was introduced into the UNC as a result of the Gas Distribution Price Control Review (GDPCR) through implementation of Modification Proposal 0188 (*"Introduction into the UNC of the Agency Charging Statement ("User Pays")*). The first phase of User Pays saw the introduction of Code and Non-Code Services and the requirement for Transporters to produce the Agency Charging Statement (ACS). All current (Code) User Pays Services were in existence within UNC prior to April 2008 but were seen as suitable for the User Pays regime.

This second phase of User Pays is to apply the principle to future industry developments and changes to existing services (whether already User Pays Services or not). The industry already has the ability to introduce new User Pays Services and User Pays Charges through the existing Modification Procedures. Modification Proposal 0192 (*"Introduction of DNO obligations to facilitate resolution of unresolved USRVs"*) is the first example of this; the associated ACS amendment is currently with Ofgem.

The Proposer, EDF, has successfully developed this Proposal with input from other Users and Transporters through the Governance Workstream. The User Pays Guidance Document, that will also be introduced if this Proposal is implemented, has also been developed through the Governance Workstream and is published on the Joint Office website for industry participants to comment on. The User Pays Guidance Document has been created as a practical guide to the end-to-end process of a User Pays Modification Proposal and should benefit all who participate in the Modification Proposal process.

24 hour gas escape number
Rhif 24 awr os bydd nwy yn gollwng

0800 111 999*

*calls will be recorded and may be monitored
caiff galwadau eu recordio a gellir eu monitro

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As mentioned above, we are fully supportive of this Modification Proposal and believe its implementation will lead to improvements within the Modification Procedures, better targeting of relevant costs (associated with Implementation and service provision), a greater degree of focussed development and support, improvements in the provision of cost assessments and a mechanism for giving a level of 'User commitment'.

We would like to take this opportunity to make specific comments on the Business Rules, which have been provided as part of the Modification Proposal.

Business Rules

1. If implemented, the changes to the Modification Rules proposed herein would apply to all Modification Proposals raised after the date of implementation, as identified in the implementation notice. Until the Modification Rules are modified, Transporters will provide a view of funding and cost breakdown analysis, development and transaction charges, as and when requested by the Modification Panel or the Authority.

Transporters currently carry out analysis work on Modification Proposals to establish the impact on the Transporters Agent (xoserve) and the central systems (UK Link). There are varying levels of analysis that can be carried out, some of which incur significant costs (e.g. when 3rd parties need to be engaged). The proposed changes to the Modification Rules will introduce procedures for obtaining the right level of analysis at the most appropriate time. Until this Modification Proposal is implemented Transporters will continue to carry analysis work as and when necessary. The non-implementation of this Modification Proposal would not preclude the creation of new (Code) User Pays Services and User Pays Charges. However, without the implementation of this Modification Proposal the governance arrangements in this area will be some what lacking.

2. The Gas Transporters will produce a Guidance document to provide guidance to the industry on the construction of a cost estimate and User Pays Modification Proposals. This Guidance document will be referenced in the Modification Rules and will be amended from time to time subject to approval by Modification Panel majority.

The production of a guidance document will assist the Proposer of any Modification Proposal in determining whether any associated costs (including analysis, development or related to ongoing service provision) should be funded through the User Pays regime. As User Pays Modification Proposals are likely to be subject to discussion and development at the appropriate industry forum, the guidance document will also assist industry participants in developing any User Pays elements of the Modification Proposal (e.g. allocation between Users). The guidance document is currently being developed by Governance Workstream members. If this Modification Proposal is implemented then approval of any proposed changes to the guidance document will be subject to majority vote of the Modification Panel. This level of governance will allow for the guidance document to be developed in a timely manner by Users and Transporters as the User Pays regime becomes a standard part of the Modification Procedures.

3. All Modification Proposals would indicate whether or not incremental agency analysis, development and/or operational costs should be funded through User Pays Charges, along with supporting arguments detailed in an updated Modification Proposal Proforma.

All Modifications Proposal that will, or may, incur incremental costs will need to specify the proposed funding arrangements. The level of incremental costs may not be known at the point that the Modification Proposal is raised, in these circumstances it is imperative that the appropriate Development Work Group or Workstream discuss and develop the Modification Proposal. The Modification Proposal proforma that is currently used and published on the Joint Office website will also need to be amended to include relevant sections for capturing User Pays related information. The Proposer has attached a suggested amended version of the proforma to the Modification Proposal (although the proforma does not form part of the UNC).

4. Modification Proposals where it is proposed that Users pay a proportion of the implementation costs would require the Proposer to provide:

a. an apportionment of analysis, development and/or operational costs between Users and Gas Transporters along with the proposed apportionment split and supporting arguments i.e. all Transporters and Users pay a portion, Transporters only pay, Users only pay. Whilst this Modification Proposal does not stipulate the use of predefined cost apportionment splits, it is intended that the User Pays Guidance document which will be developed to support the introduction of this Modification Proposal will identify suggested cost apportionments to aid simplicity; and

b. an apportionment between Users of analysis, development and/or operational costs along with supporting arguments – e.g. charge per transaction, charge per supply point, charge per AQ share, charge per meter read submitted, charge per LDZ offtake, charge in proportion to transportation charges; and c. a cost recovery period for any analysis and development costs associated with the implementation of the Modification Proposal

For each Modification Proposal it would be desirable to have a consensus view on the proportion of costs that should be allocated to Transporters and/or Users. This may be different for the analysis/development costs and the ongoing service provision costs (e.g. transactional costs). It is feasible to have to 100's of different ways of allocating costs to Users and Transporters ranging from 0%:100% to 100%:0%. It is recognised that it would be extremely difficult, if not impossible, to ever ascertain the exact percentage split that should apply. Within industry discussions, and within the guidance document, it is recognised that a degree of pragmatism is required in this area. The guidance document will therefore suggest just 5 different allocation methods are used, these being in 25% increments (i.e 0%:100%, 25%:75%, 50%:50%, 75%:25% and 100%:0%). This does not preclude different percentages being used when there is clear justification for doing so. This approach may raise questions over whether this is truly cost reflective, however, we must remember that the existing regime would lead to all such costs being funded by all Users regardless of whether they use or benefit from the User Pays Service(s) being created.

There may be Modification Proposals where the allocation of costs between Users and Transporters is not the same. This may occur, for example, when the funding of the development and analysis costs has been, in part or in full, accounted for within the relevant GDPCR. In this case it may only be appropriate that only the ongoing service provision is to be funded through User Pays Charges.

Once the User and Transporter allocation has been determined it will be necessary to then determine how the costs could/should be apportioned within these two groups. The Transporters already have arrangements in place on allocation of costs (broadly the same as the funding arrangements of xoserve). There are many ways that the costs could be allocated to Users, this

might be on a portfolio basis (e.g. total AQ, number of SSP/LSP supply points, total number of supply points etc) and will need to be determined prior to the Modification Proposal being consulted upon.

It is also possible for the allocation of costs between Users to differ for analysis / development costs and on going service provision costs. A useful example of this is the discussions that are currently taking place on Modification Proposal 0224 (*“Facilitating the use of AMR in the Daily Metered Elective Regime”*). The analysis and development costs for the Proposal, should it be implemented, could be allocated to the Users on the basis of their Larger Supply Point (LSP) portfolio share; regardless of whether they utilise the service or not. The ongoing service provision costs would then be allocated to Users based on their usage of the User Pays Service(s). The basis for this is that the development of the DM Elective regime could bring benefits to all the eligible supply points and therefore paying for the ‘availability’ of the service is warranted.

An alternative way of treating analysis and development costs would be to include them, or part of them, within the ongoing service costs (transaction costs). The issues that this may create are that if the Transporters have funded such upfront costs, and anticipated service demand is not realised, then there is a risk that these costs would not be recovered. Business Rule 16 has been created to account for this, however, we would rather that this method of recovery is never required. The other issue of including analysis and development costs within the ongoing service cost is that it could artificially inflate the cost of providing the service and act as a barrier to Users taking it up.

5. The Modification Panel shall be able to send Modification Proposals with a User Pays Service to an appropriate Workstream, Development Work Group or Review Group to attempt to resolve any issues with the funding and charging arrangements.

Deciding upon such matters as cost allocation may not always be straightforward for the Proposer and there may be strong opposing views from some Transporters and/or Users. It would not be desirable to have multiple alternative Modification Proposals that solely express different funding options. The Modification Panel, as per the existing process, will need to ensure that such matters have been sufficiently considered by an appropriate Workstream, Development Work Group or Review Group, prior to the Modification Proposal being sent out for consultation. There may be occasions where alternative Modification Proposals can not be avoided. In these cases it will be up to industry participants to comment on the appropriateness of the funding arrangements within the Modification Proposals. Following the Consultation Phase the Modification Panel may decide to send the Modification Proposals back to the appropriate forum for further discussion. If agreement on a single Modification Proposal can not be reached then both would be voted upon by the Modification Panel and the Final Modification Reports issued to Ofgem for a decision.

6. In accordance with the current provisions, prior to the release of the Draft Modification Report the Modification Panel will be able to request the Transporters to request from the Authority a View on whether the proposed cost apportionment and charges are appropriate. The Proposer may decide to amend the Proposal to reflect the Authority’s view, or others may raise alternative Proposals to take account of it.

It is not envisaged that the Authority View process will be used in order to get Ofgem’s thoughts on what the funding arrangements should be. Seeking an Authority View should be used as a process to establish whether they believe the suggested arrangements are appropriate. In the

cases where there are more than one proposed funding arrangement (i.e. alternative Modification Proposals), Ofgem may be asked to give an Authority View and determine if any of the proposed options are appropriate (which may be more than one).

7. At any stage of development prior to the Proposal entering the Consultation phase, the Modification Panel may instruct Transporters to provide a Rough Order of Magnitude (ROM) assessment, which would include cost estimates, indicative User Pays Charge(s) and a commentary on the sensitivities of these for each relevant Proposal in accordance with the time-scale determined by the Modification Panel.

The majority of, if not all, User Pays Modification Proposals will be subject to discussions at the relevant industry forum. During these discussions it will be necessary to decide when the Transporters should provide a Rough Order of Magnitude (ROM). The accuracy of this ROM will depend on how sufficiently the Modification Proposal has been developed. The Transporters will advise the Proposer of any issues that need to be resolved in order for a meaningful ROM to be produced. If for any reason a ROM had not been produced the Modification Panel may instruct the Transporters to obtain one within a set period of time. This rule, should it ever be required, should give the necessary assurance to Users that the Transporters can not unreasonably delay the production of a ROM.

8. The instruction to provide the above cost and charging estimates would be automatically cancelled if the Modification Proposal is Withdrawn or the Modification Panel rescind their instruction or the Proposal is amended.

This Business Rule allows for a commonsense approach to be applied if a cost estimate had been requested but was no longer required. This will ensure that the Transporter Agency do not waste resource time or incur unnecessary costs.

9. When the Modification Panel determines that a Proposal which contains a User Pays Service should be issued for consultation, unless the Panel determined otherwise, Transporters would provide the most recent estimate in line with the Modification Panel's instructions and associated indicative User Pays charge for the Panel's information and subsequent inclusion in the Draft Modification Report (DMR) within the time identified by the Panel.

For a User Pays Modification Proposal to go through the Consultation Phase it is imperative that all relevant parties are aware of the estimated costs that they, or others, could incur through User Pays Charges. This Business Rule ensures that the most recently produced costs estimate is provided as part of the DMR that is to be consulted upon. Nothing within such cost estimate is binding upon the Transporter and the associated User Pays Charges would, subject to the approval of the Modification Proposal, need to be finalised before implementation. These firm charges would also be included in the associated ACS amendment that the Transporters would prepare and submit to Ofgem (in line with the requirements of Standard Special Condition A15 "Agency" of the Gas Transporters license). It is envisaged that if the firm costs for a User Pays Modification Proposal were significantly different from the costs contained within the DMR then Ofgem would disapprove the ACS amendment.

10. When a cost estimate is submitted to the Panel as part of the modification proposal immediately prior to consultation, the Panel may determine that a more accurate cost estimate is needed. Transporters are then obliged to procure an estimate in accordance with the timescale determined by the Modification Panel.

If the cost estimate provided by the Transporters is not sufficient, in the Modification Panel's opinion, then the Modification Panel may request that the Transporters obtain a more accurate cost estimate. The Transporters will accordingly provide the Modification Panel with any reason as to why a more accurate cost estimate can not be provided and what information would be needed in order to produce one. If providing such a cost estimate would result in the Transporters incurring costs then the Transporters will inform the Modification Panel of such costs. Depending on how the funding arrangements have been specified, this decision to progress with such analysis by the Modification Panel could result in User Pays Charges being levied even if the Modification Proposal is not implemented (Business Rule 18).

11. At any stage during the process of developing a User Pays Charge(s), the indicative charges may vary to ensure that the value of the recovered revenue is not eroded by time (the elapsed time between incurring costs and the final recovery of the costs in full). The basis of the calculation of this adjustment to the allowed revenue recovery would be set out in the charging methodology contained within the Agency Charging Statement, (ACS).

In certain instances the time between the production of the cost estimate and the implementation of the User Pays Service could be quite significant. Also, if development and analysis costs are not recovered by the Transporters when incurred, or are, in full or in part, included in ongoing service costs, then there will also be a delay in cost recovery. It has been recognised that the Transporters, and therefore potentially other Users, should not be impacted by this and that the appropriate mechanisms will be in place to ensure the cost of such delays are accounted for. The basis for such adjustments will be included within the ACS and any changes to this will need to go through the usual ACS governance.

12. If at any stage of the process a cost estimate cannot be provided within the time identified by the Panel, then the Transporters would provide to the Panel:

a. A written explanation as to why the Transporters are unable to meet the timetable at the earliest opportunity and no later than 2 Business Days after the deadline identified by the Modification Panel; and

b. A list of the questions to be answered before the estimate could be provided, or which would need to be answered to narrow the range.

c. A date by which the cost estimate will be provided, giving due regard to the explanation provided by the Transporters

As described above (Business Rule 10) the Transporters will inform the Proposer, the Modification Panel and any relevant industry forum as to reasons why a cost estimate can not be produced. It is envisaged that this will only occur when the Modification Proposal does not have clear enough Business Rules or has not been sufficiently developed. Another factor that may make cost estimates problematic, in relation to ongoing service costs, is the information provided by Users on

demand. If the additional information that Transporters require can not be provided, then any cost estimate produced could be less accurate than required by the Modification Panel.

13. Ofgem may request that a cost estimate be produced when the Panel has not done so.

If for some reason the Modification Panel have not requested the Transporters to construct a cost estimate then Ofgem, as part of the Modification Process, will be able to do so. Ofgem already have powers through Standard Special Condition A26 of the Gas Transporters License to request information from the Transporters and nothing in this Modification Proposal impacts on those powers.

14. The Final Modification Report and the Draft Modification Report would contain the most recent cost estimate provided during the Modification process.

As per comments above (Business Rule 9), the Transporters will ensure that the FMR and DMR contain the most recent cost estimates that are available.

15. The ACS would provide for costs as specified in the Final Modification Report of implemented Proposals to be reflected in User Pays Charges.

Following the FMR being issued to Ofgem, and taking into account Business Rules 11 & 19, an ACS amendment will be required in order for any User Pays Charges to appear within the ACS. The User Pays Services, and the associated indicative User Pays Charges, will be the basis for the ACS amendment that will be subsequently issued to Ofgem. Although there is no requirement for the Transporters to consult on such ACS amendments it is anticipated that the Transporters would publish the proposed changes (as they currently do) and that Ofgem would welcome any comments from Users in relation to the ACS amendment.

16. For any implemented proposal where analysis and development costs are not recovered within the period identified within the proposal any remaining costs shall be recovered in line with the methodology and associated User Pays Charge set out in the ACS.

If analysis and development costs are, in part or in full, included within the ongoing service costs there is a danger that if forecast demand is not realised then such costs will not be recovered in a timely manner. This Business Rule allows for an additional User Pays Service to be created within the ACS for the recovery of such costs.

17. For any proposal containing a User Pays Service sent to Ofgem for decision, the Transporters shall provide indicative User Pays Charge(s) and a charge validity period. The indicative charges may be qualified with a list of factors that could result in a charge variation between the indicative charge(s) and the inclusion of User Pays Charges into the Agency Charging Statement and would be valid only for the specified validity period.

Where a Modification Proposal (FMR) is sent to Ofgem for a decision there may be occasions where the time taken to reach such a decision renders the indicative costs that were provided obsolete. This may be due to the implementation being contingent on other UK Link system

changes or simply down to a change in external costs. If this is anticipated when the FMR is produced then the Transporters may provide a list of such factors. If changes to cost estimates do occur the Transporters would ensure that the Proposer, the Modification Panel and Ofgem were aware and potentially request that the Modification Proposal is discussed at the next Modification Panel meeting.

18. Any proposal not implemented, where it was established that a portion of the analysis costs should be borne by users, such costs would be recovered in line with the User Pays Charge set out in the ACS.

If a DCA had been provided for a Modification Proposal then it is likely that the Transporters will have incurred costs in its production. Any such costs will be known prior to the work being carried out. A DCA will only be produced when the relevant industry forum unanimously agree that one should be produced or the Transporters are requested to do so by the Modification Panel or Ofgem. In making these decisions the relevant party/parties are also agreeing that, should the Modification Proposal not be implemented, then any agreed funding arrangements will apply to the recovery of the DCA costs. In lieu of any agreement on how these costs should be recovered then the ACS will provide for the costs to be recovered from all Users.

With both User and Transporter representation within industry forum and on the Modification Panel it is envisaged that such costs will only be incurred when there is general agreement that the Modification Proposal is likely to be implemented or, if not implemented, that the relevant parties are satisfied that User Pays Charges will be incurred. We believe that this level of self governance is appropriate for such decisions and that all parties have sufficient opportunity to ensure that their exposure to such charges is appropriate.

19. After a proposal has been sent to Ofgem for a decision which includes a User Pays Charge then Ofgem may request that the Transporters submit a supporting ACS amendment. Any request from Ofgem to the Transporters to submit legal text for a proposal which also includes a User Pays Charge would also constitute a request to submit an ACS amendment at the same time as the legal text.

With the ACS amendment process not being covered within the UNC governance framework it is important that the timing of any ACS amendment is managed effectively. As Ofgem aim to make decisions on Modification Proposals within 25 days, and any ACS amendment is effective 28 days after submission to Ofgem, this should not be difficult. However, there are often Modification Proposals that Ofgem can not decide upon within the target 25 days and, unless they issue their disapproval of the ACS amendment, we run the risk of having an ACS containing User Pays Services and Charges without the necessary UNC arrangements in place. Conversely we could be faced with the situation where a Modification Proposal is directed for implementation prior to the ACS amendment being submitted and subsequently have User Pays Services within the UNC without the relevant charges within the ACS.

In order to manage this process it is envisaged that Ofgem will request an ACS amendment when they are satisfied that a decision will be made within the 28 day period. This Modification Proposal has linked the production of legal text to the production of the ACS amendment. We do not believe that this was necessary and may cause timing issues for Ofgem and the Transporters. However, we do not feel that this should prevent the Modification Proposal from being implemented and that such issues can be managed as and when they arise.

20. An Ofgem direction to implement a User Pays Service will also be viewed as a decision to support the indicative User Pays Charges for inclusion in the ACS and not to veto the supporting ACS amendment, unless stipulated in the decision letter

As per our comments above (Business Rule 19), the ACS and the UNC come under separate governance arrangements and the UNC can not dictate the acceptance or rejection of an ACS amendment. This Business Rule does highlight the expectation that Ofgem would not accept either the Modification Proposal or the ACS amendment without accepting (or not disapproving) the other.

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

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

We do not believe the Proposal will better facilitate this relevant objective

Standard Special Condition A11.1 (b): so far as is consistent with sub-paragraph (a), the coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;

We do not believe the Proposal will better facilitate this relevant objective

Standard Special Condition A11.1 (c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;

We agree with the Proposer that this will better facilitate this relevant objective by ensuring the appropriate governance arrangements are in place to support the Transporters obligations under Standard Special Condition A15 of their license.

Standard Special Condition A11.1 (d): so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;

We believe that implementation of this Modification Proposal will better facilitate this relevant objective, in particular (i) relevant shippers, as Shippers will be able to directly influence the services that they receive through the UNC and ensure that the funding of such services is allocated to the appropriate parties.

Standard Special Condition A11.1 (e): so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of standard condition 32A (Security of Supply – Domestic Customers) of the standard

conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers;

We do not believe the Proposal will better facilitate this relevant objective

Standard Special Condition A11.1 (f): so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.

The implementation of the Modification Proposal will assist in the efficient implementation and administration of the UNC. Without this Modification Proposal, the associated guidance document and the amended Modification Proposal proforma, User Pays arrangements for (Code) User Pays Services will not have the appropriate governance in place. Non-implementation could lead to Modification Proposals with no regard to how they should be funded.

4. The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) Implications for operation of the system

We do not believe that implementation of this Proposal will present such implications

b) Development and capital cost and operating cost implications

There are no development costs associated with the implementation of this Proposal. The operating costs of User Pays Services are included within the relevant User Pays Charges, however, an increase in Transporter time (resource) to deal with User Pays Modification Proposal is anticipated.

c) Whether it is appropriate to recover all or any of the costs

No cost recovery would be necessary for implementation of this Modification Proposal.

d) Analysis of the consequences (if any) this proposal would have on price regulation

We do not believe there would be any consequences on price regulation from the implementation of this Proposal.

6. The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

There would be no implications for the UK Link System of the Transporters.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

a) Advantages

We agree with the Proposer that implementation of this Proposal will introduce a clear governance framework for User Pays Modification Proposals.

b) Disadvantages

We agree that the implementation of this Modification Proposal, as mentioned by the Proposer, is likely to lengthen the time it takes to get some, if not all, User Pays Modification Proposals through to Ofgem for a decision. However, we do not agree that this is necessarily a disadvantage. In order for parties to respond during the consultation period and for the Modification Panel and Ofgem to make informed decisions, it is vital that this governance framework is in place and that User Pays Modification Proposals contain the necessary and relevant level of detail. Without this in place the Modification Proposal may, despite making it through the process more quickly, not be approved due to the lack of cost estimates, indicative User Pays Charges and the necessary level of discussion and agreement that such Modification Proposals require.

15. Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

The guidance document associated with this Modification Proposal is now well developed and we believe that both could be implemented immediately following a direction from the Authority.

19. Legal Text

We believe that the suggested legal text that has been provided accurately reflects the nature and intent of the Proposal.

In summary, and based on our documented interpretation of the Business, we fully **support** the implementation of this Modification Proposal. Hopefully these comments have been helpful, if you have any questions relating to this Representation then please do not hesitate to contact me.

Yours sincerely

{by e-mail}

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