

Mr. Tim Davis  
Joint Office of Gas Transporters  
First Floor South  
31 Homer Road  
Solihull  
West Midlands  
B91 3LT

Your ref  
Our ref  
Name Chris Hill  
Phone 0121 336 5224  
Fax  
E-Mail christian.hill@rwenpower.com

June 12, 2009

**Re: Proposed UNC Modification Proposals 0229: "Mechanism for Correct Apportionment of Unidentified Gas"**

Dear Tim,

RWE Npower does not support the above Proposed UNC Modification.

Although we support the aim that the Proposed Modification is trying to achieve, namely determining the causes of unidentified gas and the extent to which different sectors of the UK gas market carry responsibility for this, we have serious concerns as to the legal framework which the Proposer has suggested in order to contract with the Appointed Unidentified Gas Expert (AUGE).

The current arrangements whereby the SSP sector is liable for the entire cost of all unidentified gas are now generally accepted to be inequitable and we welcome the fact that the LSP sector is taking steps towards determining a mechanism to establish their correct level of contribution towards this issue.

However, while we support the concept of determination of the size of the unidentified gas issue by an independent third party expert, we are unable to support the proposed contractual arrangements under which the AUGE would take up its role and perform its function, whereby the AUGE would contract with the Transporters but affected Shippers would be liable, the Transporters being indemnified from any liability. The concept of unlimited liability in relation to this arrangement is something with which we are particularly uncomfortable.

We made this point during discussions relating to the Proposed Modification and we are gratified that the Proposer took this into account by adding the following amendment to Section 5 of the Business Rules:

*"The AUGE shall limit the extent of any legal proceedings to the recovery of its fees as contained in its contract with the Gas Transporters."*

This allayed our fears to some extent and should have enabled us to offer our support. However, a couple of days later, National Grid Distribution published an open letter to the Joint Office listing the Transporters' concerns in relation to the contractual arrangements which contained the following statement:

npower

Oak House  
Bridgwater Road  
Worcester WR4 9FP

T +44 (0)1905/34 05 21  
F +44 (0)1905/34 04 88  
I www.npower.com

Registered office:  
Npower Limited  
Windmill Hill Business  
Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

Registered in England  
and Wales no. 3653277

*“We are aware that Modification Proposal 0229 has been amended and note the changes to Section 5 “Generic Terms of Reference for Appointed AUGE”. From a commercial perspective we do not believe the AUGE would be willing to limit the extent of its ability to recover monies properly due to it pursuant to its contract with the Transporters. If Transporters attempt to impose this provision during the tender process, we may (unnecessarily) concern the prospective AUGE’s in respect of the level of risk involved with a consequential reduction in the number of parties willing to respond to the tender.”*

Although we are sympathetic to the Transporters’ view that they should be exempt from any possible liability in relation to the AUGE, particularly as they are unaffected by any arrangements to quantify and apportion market responsibility for unidentified gas, the view of our lawyers is that we cannot accept potentially unlimited liability for a contract to which we are not a party and which we have no control over.

It is regrettable that we are unable to offer our support for the Proposed Modification as we reiterate that we agree with the principle behind it. However, the Transporters’ view on the amendment to the Proposed Modification intended to limit our risk to an acceptable level has unfortunately made this unavoidable.

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

Regards,

Chris Hill

Gas Codes Analyst