

Joint Office of Gas Transporters
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13th July 2010

RG0252 Proposal 1: Amend and remove UNC TPD Section V3 text inconsistencies, errors and bi-lateral insurance clause.

Modification Reference Number 0298

RWE npower would like to provide comments on the above Modification Proposal.

In response to the first element of the Modification proposal which seeks to remove a misinterpretation within the UNC of Ofgem's Best Practice Guidelines (BPG) 4.7. RWE npower seeks further clarification around the "User's Value at Risk increases materially" used within the suggested legal text, which it is proposed will replace the "Users Value at Risk is increased by over 20%".

RWE npower believe the use of "materially" in this statement would leave the UNC open to interpretation, and the "material increase" would be very much in control of the network operators who could apply different figures around what they believe to constitute a "material increase". RWE npower believe that circumstances surrounding "material increase" should be stated explicitly within the Legal Text to avoid any discrepancies in interpretation between counterparties.

In relation to the second element of the Modification Proposal, which removes bi-lateral insurance from the UNC as a form of security or surety, RWE npower believe that if this type of cover is unable to be provided then it seems appropriate to remove any reference of it from the UNC.

In regards to the third element of the Modification Proposal, which seeks to remove the 80% value of surety or security clause in UNC V3.3.2(a), RWE npower feel it would be appropriate to remove this clause from the UNC, as it does not explicitly link to the BPG.

RWE npower legal team have also commented that clause 3.2.4 within the suggested text is unclear and suggest the drafting should read;

"Save where either paragraph 3.2.5 , 3.2.6 or 3.2.8 applies A User's Code Credit Limit may from time to time be reviewed and revised, in accordance with the Code either (i) in the case of (a), (b), (d) and (e) on notice of not less than 30 Days, or (ii) in the case of (c) below on notice of not less than 2 Business days following the Business Day on which a notice is issued"

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They have also suggested that clause 3.2.11 has the word 'or' removed from the end of the paragraph, as it appears to have been left there in error. The clause would then read;

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3.2.10(a) and (b) shall apply Notwithstanding paragraph 3.2.10, where at any time as a direct consequence of an unanticipated increase in a Users registered aggregate Supply Point Capacity, a User's Value at Risk increases materially, a User will have one calendar month from the date of notice given by the relevant Transporter, to provide additional surety or security and after the expiry of such date, ~~or~~ paragraphs 3.2.10(a) and (b) shall apply.

If you have any further questions please feel free to contact me.

Yours faithfully,

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**RG0252 Proposal 2: Alignment of portfolio sanctions across UNC TPD Sections V and S
Modification Reference Number 0299**

RWE npower provides comments on the above Proposal.

RWE npower feel that the above Proposal's Legal Text should be modified as it is unclear as to what "the date specified in the notice" refers to, as to whether this is the issue date of the notice or the date by which action should have been taken to reduce indebtedness.

If the date specified in the notice is the issue date of the notice RWE npower believe the above Proposal would not be appropriate given the current timescales allowed with which to respond to a User's Value at Risk exceeding 100%. Section V3.3.1b of the Uniform Network Code Transportation Document states that if a User's VAR exceeds 100% that a User will have, "2 Business Days from the date of such notice to provide additional surety or security". Given that this is the case it would seem unreasonable for a Transporter to issue sanctions if a User is taking action within the agreed timescale.

If however "the date specified in the notice" referenced from the Legal Text of the above Proposal refers to the date by which a User has been requested to provide additional security, for example issue date + two working days, RWE npower supports this Proposal as it is believed that two working days is sufficient time to respond to a notice to reduce the Value at Risk. RWE npower believe the clause could be improved by incorporating word "**immediately** after" otherwise "after" could be construed as anytime after.

RWE npower wish there to be further clarification on the term "date specified in the notice" as notices issued when a User's Value at risk exceeds 100% have two dates on them, the issue date and the date by which action is required in order to reduce Value at Risk.

Yours sincerely,

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RG0252 Proposal 3: Introduction of Fitch as an allowable Credit Rating Agency for the purposes of Code Credit Arrangements

RWE npower would like to provide comments on the above Proposal.

Given that Fitch Ratings is a recognised investment grade issuer utilised within the Gas Transporter Licence it would seem appropriate that for the purposes of obtaining an unsecured credit limit that Fitch Ratings are included within the UNC.

By bringing the UNC in line with the CUSC, RWE npower believes that by including all three rating agencies (Moody's Investment Service, Standard and Poor's and Fitch Ratings), it could assist new entrants by reducing barriers to entry as it will give greater choice in credit rating agencies which are acceptable within the UNC. RWE npower also believes that it is appropriate to alter the UNC such that it refers to CRA to reduce the possible future administrative impact of any proposed modifications.

RWE npower also note a typographical error in section 3.4.5 of the proposed Legal Text:
"3.4.5 For the purposes of Code: "Enforceable" shall mean the Transporter (acting reasonably) is satisfied that the instrument of security is legally enforceable and in this respect, where security is provided by a company registered outside of England and Wales, the Country of residence of such company must have a sovereign credit rating of a Qualifying Company (where such ratings conflict, the lower of the two ratings will be used) and the User shall at its own expense provides such legal opinion as the Transporter may reasonably require;"

However, RWE npower would ask for further clarification as to whether the costs involved in Fitch monitoring incurred by the DNs, as referred to within the Draft Modification Report, would ultimately be a cost passed on to Shippers. If significant costs were to be passed on to Shippers, RWE npower believe that the costs may outweigh the benefits thus further information on this point would be appreciated.

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**RG0252 Proposal 4: Removal of the use of Specially Commissioned Ratings for the purposes of obtaining an Unsecured Code Credit Limit
Modification Reference Number 0301**

RWE npower offers support for the above Proposal.

It is the belief of RWE npower that the use of Specially Commissioned Ratings should be removed from the UNC as they do not provide sufficient certainty over a User's credit worthiness. Given that this is a snapshot report it cannot be an appropriate reflection on a User's credit worthiness other than on the date on which it is initially set. Without providing a long term outlook that is upgraded or downgraded based on ongoing events it is likely that a User would be assigned an inappropriate Unsecured Code Credit Limit.

Whilst RWE npower believes that it is appropriate to have tools available to assist all market participants it believes that under the current arrangements an inconsistent approach is being applied to credit monitoring tools as the Specially Commissioned Rating is not subject to the same degree of monitoring as other tools.

RWE npower would like to highlight that there is a discrepancy between the proposed legal text and current text where a change has not been highlighted regarding the number of Business Days by which a User should notify the Transporter of a ratings change in section V3.1.1. Current text states 1 Business Day however the proposed text states 11.

RWE npower would like confirmation as to whether or not this is a typographical error as RWE npower believes 1 Business Day is appropriate as in the original legal text. However the suggested legal text states, "The User shall notify the Transporter within **11** Business Day if the User's Approved Credit Rating changes or if the User has a reasonable belief that its Approved Credit Rating is likely to change. **Where the User commissions more than one Specially Commissioned Rating it shall notify the Transporter of each such rating and the Transporter shall use the lowest as the Approved Credit Rating.**"

It is RWE npower's belief that this modification should be implemented as soon as possible as currently no User utilises a Specially Commissioned Rating and therefore the ability to do so should be removed before a User undergoes the significant cost of obtaining one for it to be removed at a later point.

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**RG0252 Proposal 5: Definition of Regulatory Asset Value (RAV) when calculating Maximum Unsecured Credit
Modification Reference Number 0302**

RWE npower offers support for the above Proposal.

RWE npower believe that the above Proposal provides a number of advantages including formalising the definition of RAV and providing Users with the most up to date view of a Transporter's RAV and hence their maximum unsecured credit limit with that Transporter. It is important to RWE npower that a non-discriminatory approach is taken to how the information on a Transporter's RAV is articulated and the above Proposal goes some way to address this. It is believed that the above Proposal provides clarity to all Users on the RAV of the Transporter however the Proposal does not fully address how the information will be articulated.

RWE npower wish their response to be considered alongside the response to Modification 306. RWE npower believe that given that Modification 306 looks to bring in a centralised contact register, which in principle RWE npower supports, this seems the most appropriate tool to articulate the changes to the Transporters' RAVs and that this should be referenced in the Legal Text. By communicating the information in this way the Transporters will be non-discriminatory as all Users' contact details will be available and if communicated via email will give Users the most up to date view via the fastest communication tool.

Currently the proposed Legal Text only articulates that "Transporter's relevant price control period which will be published and updated to current year prices by the Transporter" however RWE npower believes by updating the Legal Text to specify how, when and where this information will be communicated, this would provide users with better access to this information.

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RG0252 Proposal 6: Obligations for Users to maintain a Code Credit Limit and at a reasonable level
Modification Reference Number 0303

RWE npower does not support the above Proposal.

RWE npower supports the Proposer in that Users should attempt to maintain cover at a reasonable level however it does not believe that this Proposal is the most effective means of ensuring an appropriate Code Credit Limit is in place. RWE npower appreciates that sanctions must be applied to Users who do not maintain appropriate cover, however responding within the deadline specified before a second notice is issued within a two month period is inappropriate and Users are likely to incur additional costs in order to respond within this timescale.

Given that Transporters have the ability not to deem Guarantees as effective until they have been signed by their Board this can significantly increase the time to which a Guarantee can be deemed to become effective, in some cases several weeks. Thus under the proposed arrangements this could result in Users having portfolio sanctions applied to them under Section S3.5.3 despite the fact that they have taken steps to increase their Code Credit Limit. RWE npower therefore believe that given the current process the above Proposal would disadvantage all Users.

RWE npower would like to use this opportunity to raise that given that Deeds of Amendment to Guarantees are not recognised by all Transporters the above Proposal would provide further disadvantage to some Users. Deeds of Amendments are significantly quicker to put in place compared to a new Guarantee where wording would need to be agreed by the User and Transporter. RWE npower therefore believes it is the case that were the above Proposal to be approved this would disadvantage Users who use Guarantees compared to those who use other forms of cover, as Guarantees take longer to be agreed.

The proposed Legal Text also states that “A Code Credit Limit shall be deemed unreasonable if a Transporter issues more than one 100% VAR notice within 2 consecutive calendar months to a User”. RWE npower would dispute that this is not a fair definition of unreasonable as a User could in theory receive two notices within one month following receipt of invoices and this certainly would not give a User sufficient time to react to increase their Code Credit Limit in an efficient and cost effective manner and is thus unduly penal.

If however the above Proposal were to be implemented RWE npower would suggest that the following wording be used; “Once a level of credit has been put in place in accordance with this paragraph V3.1.9, then any sanctions that have been applied by

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the Transporter under this paragraph will be removed within one Business Day”. RWE npower believe that this would provide additional clarity, and would replace the proposed sentence of “Once a level of credit has been put in place in accordance with this paragraph V3.1.9, any sanctions applied will be removed within one business day.”

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**RG0252 Proposal 7: Introduction of a rating table for independent credit rating agencies for use with Independent Assessments
Modification Reference Number 0304**

RWE npower offers support for the above Proposal.

Given the lack of a clear guidance on the application of the scoring mechanism it would seem appropriate that the above Proposal is put in place in order that no User is assigned an inappropriate Unsecured Code Credit Limit. RWE npower believe it to be incorrect if different Transporters were to use different methodologies for establishing an Independent Assessment Score.

This Modification provides additional clarity to Transporters in assessing the Score of a User and builds Users' confidence that their Score will be derived using a consistent methodology in each of the Transporters' areas. RWE npower believe that a consistent approach across Transporters will also improve access to Unsecured Credit Limits resulting from the Transporters' RAV for all Users who would utilise this methodology, including new market entrants. It is also believed that uniformity across more than one code is also beneficial to Users.

Given that a similar table included within the above proposal has previously been approved by Ofgem, RWE npower see no reason as to why this should not be implemented into the UNC. RWE npower agree with the Proposer, that the Code Credit Limit applied to the applicant should be no higher than the lower of the value recommended by the independent assessment agency and the value calculated based on the table. By preventing an inappropriately high Unsecured Credit Limit being given to a User RWE npower believe this will reduce other Users' exposure.

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**RG0252 Proposal 8: Unsecured Credit Limit allocated through payment history
Modification Reference Number 0305**

RWE npower does not support the above Proposal.

Although RWE npower supports the revised approach to administration errors such that the Uniform Network Code (UNC) is brought in line with the Connection and Use of System Code (CUSC), RWE npower believe the proposed approach to only allow new Users the ability to use payment history is discriminatory. The approach the CUSC offers is non-discriminatory with regard to payment history whilst also offering a “soft landing” which RWE npower strongly supports and believe should be introduced into the UNC. In line with the CUSC, RWE npower believe that the payment history allowance maximum should remain at 2% of the Transporter’s Maximum Credit Limit and not be reduced to 0.8% as suggested in the above Proposal.

RWE npower believe that the implementation of the above Proposal is extremely detrimental to those Users who have acceded to the UNC for over two years and who have a strong payment record. It is believed that offering the payment history with a soft landing to all Users this will promote a strong payment record for Users through the benefit of payment history allowance and could therefore reduce the risk to the industry.

If the above Proposal were to be approved RWE npower would note that the current wording of “based upon period of time elapsed” does not sufficiently convey the objectives of this clause. If this clause is to reward consistent and timely payment, RWE npower would suggest the wording “the Transporter may allocate an unsecured credit limit based upon a criteria of consistent and timely payment by the User of all invoices by the due date and in accordance with Section S.”, be inserted into section V3.1.5

RWE npower would also suggest the wording of Section V3.1.6a as follows, "on the Invoice Date for payment **and** where payment is made in full within 2 Business days" and that immediately following V3.1.6 (a) (ii) insert the word "or".

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**RG0252 Proposal 9: Administration of Shipper Credit Security Contact Details
Modification Reference Number 0306**

RWE npower offers comments on the above Proposal.

RWE npower believes a centralised register is an appropriate means to store Shipper contact details. The implementation of the above proposal will increase process efficiency and reduce cost and risk to Transporters. It will also assist Users of the system as it will be clear to them to whom in their organisation the credit cover information is being sent.

Given that credit cover information is currently also transmitted via email it would seem appropriate that email addresses are also stored alongside those details suggested in the Proposal. Email would also give Transporters the opportunity to give written notice which would be received immediately by the User.

RWE npower wish to highlight a discrepancy between the Draft Modification Report and the Modification Proposal. The Proposal cites Credit Contact Address as a required field to be stored however this is not included on the bullet point list of the Modification Report. Were the above proposal to be approved RWE npower would be keen that Credit Contact Address be stored in the database.

RWE npower would be interested to see the Legal Text alongside the Modification Proposal before full support can be given to this modification, although the principle of a contact register is supported. Guidance is also required on how this information will be gathered from those Users who have already acceded to the UNC. RWE npower wish their response to be considered alongside the response to Modification 302; it is believed that along with holding contact details to articulate sanctions and for debt recovery that the through the contact register the RAV to be utilised to calculate a User's Unsecured Credit Limit can be articulated to Users. RWE npower believe that the contact register should also be utilised to articulate notifications referred to in Section V3.3.1 of the UNC.

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**RG0252 Proposal 10: Alignment of Defaulting User Threshold with Insolvency Act (1986) Threshold
Modification Reference Number 0307**

RWE npower offers conditional support for the above Proposal.

RWE npower believe that it would seem appropriate to align the Defaulting User Threshold to the Insolvency Act (1986). This not only aligns with Section S of the UNC but also removes an arbitrary value with a dynamic one which has the flexibility to change over time. The implementation of the above Proposal will also reduce the risk of exposure to bad debt of Transporters and hence Shippers through pass through of unrecovered debt.

RWE npower support the Proposer on the implementation date of 1st October 2010 in order to align with the implementation of the other credit cover proposals. It is however noted that there is a lack of Legal Text included in the Draft Modification Report and Modification Proposal and RWE npower believe it would be appropriate to view before full support can be given.

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**RG0252 Proposal 11: Appropriate use of terms Surety and Security in the UNC TPD Section V
Modification Reference Number 0308**

Dear Bob,

RWE npower would like to provide comments on the above Modification proposal.

The Modification seeks to apply the terms surety and security consistently throughout TPD Section V. This involves treating Letters of Credit and Guarantees as surety and deposit deeds and prepayment agreements as security.

In response to the Modification RWE npower believe these amendments are acceptable and introduce greater clarity to the Code. However RWE npower would ask whether there are any similar references to Security and Surety outside Section V, which may also require amending for consistency. Further clarification around this point would be appreciated.

If you have any further questions please feel free to contact me.

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RG0252 Proposal 12: Timeframes for establishing and extending Guarantees and Letters of Credit
Modification Reference Number 0309

RWE npower does not support the above Proposal.

RWE npower believe it would seem inappropriate to unconditionally deem that a form of cover has zero value when it has not expired. Given that a Letter of Credit can be called upon at any point for amounts owing within the timeframe of the Letter of Credit, RWE npower believe the Transporter has sufficient opportunity to obtain funds owing. Thus by insisting that a User's Letter of Credit is deemed to have zero value 30 days prior to expiry may mean that Users could incur additional costs of obtaining cover for the 30 day overlap period when the existing cover they have in place is sufficient.

The issue with Letters of Credit is that some banks can still charge for a Letter of Credit even if the start date is in the future as it can be deemed that you have taken up additional lines with them. RWE npower therefore do not agree with the Proposers wording for Letters of Credit as it would seem unfair to expect Users to pay for a facility they are not yet utilising. Thus RWE npower believe that as long as Code Credit Limit has been agreed between the User and Transporter one month prior to expiry of any form of Surety or Security that this should be sufficient.

RWE npower would note that if the above Proposal were to be implemented there appears to be a typographical error in the proposed Legal text "3.2.9 Where a User's Code Credit Limit has been revised downwards in accordance with paragraph 3.2.4(c) (iii) above, the Transporter will notify the User accordingly on the next." This sentence appears incomplete and therefore RWE npower would suggest "3.2.9 Where a User's Code Credit Limit has been revised downwards in accordance with paragraph 3.2.4(c) (iii) above, the Transporter will notify the User accordingly from the next Business Day following the occurrence of the event described in paragraph 3.2.4(c)".

RWE npower believes that the implementation of the above Proposal could create a barrier to entry and be detrimental to small suppliers through the increased costs of obtaining cover.

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**RG0252 Proposal 13: Removal of DNOs as Users from TPD V3.3.4
Modification Reference Number 0310**

RWE npower offers comments on the above Proposal.

RWE npower wish the response to Modification Proposal 0310 to be considered alongside Modification Proposal 0311.

RWE npower believe that there is insufficient information within the Modification Proposal in order to offer support or rejection. RWE npower appreciate that IDNOs may perceive the current text within the UNC as providing differential treatment however the Modification does not provide sufficient information to draw conclusions as to whether this treatment is justified. The Modification Proposal itself states, “the justification for this [increased cover requirement] is not clear” thus RWE npower would like further clarification as to why this text was included in the UNC before a decision is made.

It is stated in the Proposal 0311 that “the move to providing credit cover for 51 days to credit cover for 51 days +12 months will represent a significant increase in costs for DNO Users”. RWE npower therefore wishes for further clarification as to why this was brought in as a requirement if as stated in the Proposal 0311 that “the justification for this is not clear as Exit Reform does not involve any great change under which Exit Capacity is sold by the NTS”. If appropriate justification as to why this additional cover is required cannot be provided RWE npower would support the “Removal of 12 month iDN securitisation requirement for NTS Exit Capacity charges” and thus negate the need for “an equivalent 12 months LDZ Exit Capacity NTS (ECN) charges” which would be a cost borne by Shippers.

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**RG0252 Proposal 13a: Removal of DNOs as Users from TPD V3 and V4
Modification Reference Number 0311**

RWE npower offers comments on the above Proposal.

It is stated in the above Proposal that “the move to providing credit cover for 51 days to credit cover for 51 days +12 months will represent a significant increase in costs for DNO Users”. RWE npower therefore wishes for further clarification as to why this was brought in as a requirement if as stated in the above Proposal that “the justification for this is not clear as Exit Reform does not involve any great change under which Exit Capacity is sold by the NTS”. If appropriate justification as to why this additional cover is required cannot be provided RWE npower would support the “Removal of 12 month iDN securitisation requirement for NTS Exit Capacity charges” and thus negate the need for “an equivalent 12 months LDZ Exit Capacity NTS (ECN) charges” which would be a cost borne by Shippers.

RWE npower would like further clarification on item 3 where it states “Securitisation between some Transporters in respect of Transportation charges is inconsistent and therefore the requirement should be similarly removed”. RWE npower would note that just because something is inconsistent it should not be removed but made consistent if required. RWE npower wish to understand further what these inconsistencies are and whether there are ways in which standardisation could occur.

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