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03 November 2010

Dear Bob,

UNC 0319V - Code Governance Review: Role of Code Administrators and Code Administration Code of Practice

This response should be read in conjunction with E.ON UK's response to Modification Proposals 318 – 325. On balance, E.ON UK continues to support this proposal as a package of governance measures, but has serious concerns about the “send back” arrangements as described in this varied Modification Proposal, which if raised as a standalone proposal, we would be unable to support. The variation in respect of “send back” powers is, in our view materially worse than its predecessor Mod 319 as it now omits any detail on what process the Panel should follow. Of particular concern is the new paragraph within the proposal which states that:

“Upon the Authority sending back a proposal, the Panel will revise and resubmit a Final Modification Report including the additions requested by the Authority as explained above as soon as is reasonably possible (taking into account the complexity, importance and urgency of the modification).”

This implies that the only process the Panel must follow is to amend the FMR and then return it to the Authority. This approach is inconsistent with both the CUSC and BSC proposed governance arrangements; both of which provide for the Panel to re-visit its determination on whether or to recommend implementation where the Mod or the FMR (equivalent) is amended. Given that the Authority would be expected to use the “send back” powers for more than just trivial issues, it is reasonable to assume that this will lead to further work on, or in relation to, the proposal, which may lead consultees or Panel members to re-consider their position on whether or not they support implementation of it.

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Furthermore, this proposal seems to imply that an original proposal can also be directed to be amended by the Authority and then immediately sent back for Authority decision. In practice, we would expect such a change to trigger a variation request, to be considered by the Panel which would determine whether or not the change is material; and if it is, then the proposal would need to be withdrawn and raised as a new proposal, requiring industry consultation, a new FMR and a Panel recommendation.

This level of detail regarding Panel process is missing from this proposal. This means that inadequate safeguards are in place to protect the legitimate rights of proposers, Shippers and Transporters. Moreover, it is also likely to undermine Competition Commission appeal rights if the merits of a proposal are not properly considered by the Panel before the proposal is sent to the Authority for its decision.

We would like to underline that it is not appropriate for these issues to be clarified in formal legal text. This is an omission from the Proposal which if not amended, will require a further Modification Proposal to establish appropriate procedure in order to ensure Proposals are dealt with consistently and fairly through the governance process. As a result, we consider that the increased uncertainty that this aspect of the proposal will bring if implemented could be considered detrimental in terms of efficiency in the administration of the UNC.

If you wish to discuss this response in any more detail, please do not hesitate to contact me on T: 02476 181421

Yours sincerely,

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Dear Bob,

UNC 0322V - Code Governance Review: Inclusion of ‘The Gas Transmission Transportation Charging Methodology’ and ‘The Gas Transmission Connection Charging Methodology’ within the UNC

This response should be read in conjunction with E.ON UK’s response to Modification Proposals 318 – 325. On balance, E.ON UK supports this proposal, but has concerns about its drafting, following variation. The key changes to this proposal concern the following paragraphs:

- *“that Proposer of a Modification Proposal in respect of a Charging Methodology state its opinion as to why it believes that the proposal does not conflict with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter Licences;*
- *at initial discussion of a Modification Proposal in respect of a Charging Methodology, the Modification Panel consider whether the proposal conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter*
- *that the Modification Report incorporate a view as to whether a Modification Proposal in respect of a Charging Methodology conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter Licences”*

Applicable to all the bullet points above, it is unclear what happens next in term so of the governance process after these points have been dealt with. For instance, what happens if the Transporter disagrees with the Proposer’s assessment of why it does not conflict with the relevant parts of the licence? Is the Proposal progressed regardless? Furthermore, what duties does the Panel have, once it has “discussed” the proposal? Finally, in respect of the final bullet point, above, whose view is being described here? The Transporter(s)? Ofgem? Consumers?

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This lack of clarity could be considered to be detrimental in terms of efficient administration of the UNC.

If you wish to discuss this response in any more detail, please do not hesitate to contact me on T: 02476 181421

Yours sincerely,

Richard Fairholme (by email)

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Dear Bob,

UNC 0323V - Code Governance Review: Self Governance

This response should be read in conjunction with E.ON UK's response to Modification Proposals 318 – 325. We consider that 323V successfully adds clarity to the original Modification Proposal 323. The changes made to the proposal have not altered our view of it and therefore we continue to support its implementation.

If you wish to discuss this response in any more detail, please do not hesitate to contact me on T: 02476 181421

Yours sincerely,

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Dear Bob,

UNC 0324V - Code Governance Review: Significant Code Reviews

This response should be read in conjunction with E.ON UK's response to Modification Proposals 318 – 325. We consider that 324V successfully adds clarity to the original Modification Proposal 324. However, the changes made to the proposal have not altered our overall view of it and therefore we continue to not support its implementation. As noted in our response to Mod 324, our view might change in favour of implementation of this proposal if:

- a) A higher threshold of support was required for the UNC Panel to recommend implementation of a proposal that effectively originates from an SCR (such as that set out in UNC 0312 – “Introduction of Two-Thirds Majority Voting to the UNC Modification Panel”); and
- b) There was a limit introduced on the time that work on an industry proposal could be suspended during an SCR.

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Yours sincerely,

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03 November 2010

Dear Bob,

UNC 0325V - Code Governance Review: DN Transportation Charging Methodology and Change Governance

This response should be read in conjunction with E.ON UK's response to Modification Proposals 318 – 325. On balance, E.ON UK supports this proposal, but has concerns about the drafting, following variation. The key changes to this proposal concern the following paragraphs:

- *“that Proposer of a Modification Proposal in respect of a Charging Methodology state its opinion as to why it believes that the proposal does not conflict with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter Licences;*
- *at initial discussion of a Modification Proposal in respect of a Charging Methodology, the Modification Panel consider whether the proposal conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter*
- *that the Modification Report incorporate a view as to whether a Modification Proposal in respect of a Charging Methodology conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Gas Transporter Licences”*

Applicable to all the bullet points above, it is unclear what happens next in terms of the governance process after these points have been dealt with. For instance, what happens if the Transporter disagrees with the Proposer's assessment of why it does not conflict with the relevant parts of the licence? Is the Proposal progressed regardless? Furthermore, what duties does the Panel have, once it has “discussed” the proposal? Finally, in respect of the final bullet point, above, whose view is being described here? The Transporter(s)? Ofgem? Consumers?

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