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Dear Mark

RE :- UNC Urgent Modification 0036 – Limitation of incremental capacity offered in the QSEC auctions
UNC Urgent Modification Proposal 0043 – Limitation on offering for sale unsold capacity

I write in response to the two letters from Robert Hull dated 25 August and to your note of 26 August clarifying the period for which capacity would be affected if these Proposals were to be implemented. I would also refer to the note issued by Paul Roberts, of UK Transmission, on Monday afternoon.

As you will be aware from our formal representations to these Modification Proposals and from our comments at industry meetings, we have strong views about the implications of implementation. Without repeating the entire content of the previous correspondence, I would re-iterate the major concerns.

Restriction of Incremental Capacity

In the case of incremental capacity (Modification Proposal 0036), we believe that the principle of up to 150% of baseline being available to Users within three years should be maintained wherever possible. However, recognising that there may be exceptional circumstances where may not be achievable, it may be appropriate to allow minimal departure from this principle. Where this is to be permitted, the reasons for the variation must be open and transparent to the industry and the variation sanctioned by the regulator. Any resulting restriction in the availability of incremental capacity must be visible to participants in the LTSEC process in advance of it being conducted. This would maintain an open and transparent process without bias in favour of any individual party.

Again, we find ourselves supportive of the aim of the Modification proposal but do not find sufficient comfort in the drafting of the detail of the proposal to lend our unreserved support. We concur with the view, expressed by Robert Hull, there needs to be more detail

of the process to be followed and the nature and location of any such restrictions or constraints.

Restriction of Baseline Capacity

With regard to the proposal to limit the sale of capacity below baseline levels, Modification Proposal 0043, we have even greater concerns about the implications of this proposal. We entirely endorse Robert Hull's view that the Transporters must be bound by their "all reasonable endeavours" Licence obligations to make available Baseline capacity up to D-1.

Whilst we understand that a change in the pattern of gas flows can have an impact upon the physical limit of capacity available, the level at which Baseline capacity is set for the system operator (SO) already allows for the inability of all Entry Points to operate at maximum physical capacity at the same time.

Having set these Baseline levels, the commercial regime has then been developed from this foundation. The allowed revenue under Price Control and the Incentives regime, sharing these costs and benefits between the SO and the rest of the industry, uses these baselines as reference points. Therefore, to allow withholding of the Baseline quantity undermines the basis of the commercial regime.

The note provided by Paul Roberts does provide some further information on the potential to impact upon the availability of incremental capacity but in our view does not offer any reasoning or rationale to allow withholding of existing Baseline quantities in any circumstances.

If and where there is any proposed departure from this "all reasonable endeavours" obligation, there must be a process in place which transparent and unambiguous to the entire industry. The parameters for such exceptions has not been discussed in the context of the amendment of the IECR and is not something that can be discussed, designed, agreed and implemented in the timescale facilitated under this Urgent Modification Proposal.

Summary

In summary, we believe that there may be circumstances where a restriction of incremental capacity below the 150% of baseline within three years may be warranted. We would commend the development of an open and transparent process by which such restriction can be agreed and notified to the wider community in advance of a first offer for sale through the LTSEC process.

With regard to restriction of capacity below baseline, we are not convinced by the case put forward by UK Transmission to date that there is any justification for withholding baseline capacity. Again we concur with the view expressed in Robert Hull's letter that in order to consider such arrangements, the nature and location of the restriction and the process to be followed must be open and transparent to the wider industry.

For the reasons above, we do not support the implementation of either of these Modification Proposals as they currently stand. We believe that Modification Proposal

0036 could be developed to provide an agreed process where limited restriction of incremental capacity could be applied where there is justified cause.

Although Robert Hull's letter of 25 August indicated that Modification Proposal 0043 was "finely balanced and should be approved subject to certain amendments to the legal text", we contend that these requirements have not been met, nor has there been any demonstration of a justification to relieve UK Transmission of their "all reasonable endeavours" Licence obligation.

Please contact me if you require any further information.

Yours sincerely,

Mike Young
Commercial Manager