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7 September 2005

Dear Mark

UNC modification proposals 0036 and 0043

I am writing further to the UNC modifications proposals 0036 and 0043 published on 26 August 2005. Wales and West Utilities Ltd ("WWU") welcomes the opportunity to respond to the issues raised.

WWU is sympathetic with the principles of the modification proposals and understands that the primary intention is to align the UNC with the IECR. However, it is not possible to come to a definitive view on these modifications whilst they are at an early stage of development.

WWU believes it is premature at this stage to indicate, albeit without fettering the Authority's discretion, whether the proposals should be approved. It is clear from the issues raised in the letters that Ofgem is uncomfortable with the overall levels of development of the proposals and in light of the subsequent e-mail¹ provided by the Joint Office on the 29th August, it may have misunderstood the extent of the impact of modification proposal 0043.

On the basis that the modification proposals are intrinsically linked, WWU believes it is appropriate to comment on both of the proposals in a single response. The core of this response will address the issues raised by Ofgem in its letters. We feel that it is important that we make it clear that the comments provided in this response do not necessarily indicate our support for the implementation of these proposals. We are unable to pre-judge the outcome of the "second round enhancements" to the proposals and therefore, feel it would be premature to test the interim versions against the relevant objectives.

Ofgem alludes to the incorporation of an Authority consent process, in effect requiring regulatory review on the occasion that Transco NTS feels unable to meet the mandatory lead times. Ofgem states that it would not expect to grant approval of the proposals until such time as the formal consent processes are established. Market based allocation systems are best left to operate freely and unfettered. We also question if there sufficient time to develop the necessary processes in a robust and legally secure manner prior to the commencement of the next auction round.

¹ Joint Office e-mail, "Addendum to Ofgem's Initial Views Letter on modification proposal 0043", 29th August, 2005



WWU believes that, due to the commercial significance of the entry capacity auctions, there should not be a demand that the industry delivers these processes in the time periods envisaged. The relevant workstream, in conjunction with Ofgem should be afforded a realistic period of time to examine the possibilities and deliver a robust mechanism which is workable, consistent with Transco NTS Licence conditions and not open to legal challenge. On this basis we recommend that the proposals should be sent back to the workstream with a target delivery date of 2006, prior to the commencement of the subsequent LTSEC auctions.

Ofgem suggests that there are a number of options available to introduce a formal request process for limiting capacity sales. With regards to modification proposal 0036 Ofgem proposes that modifications could be made to the NTS GT Licence, or to the NTS IECR. At this stage, and in the event that Ofgem does approve the modification proposal, WWU believes that given the choices the IECR is the appropriate document to be amended. The relevant licence conditions were developed to support the introduction of entry capacity auctions and are structured in such a way as to require Transco NTS to maximise delivery of the aforementioned capacity. We firmly believe that these aspirations should be maintained and only in the event that Transco NTS is firmly of the belief that it cannot meet the Licence determined outputs should it engage in the consent process. WWU is conscious that modification of the Licence may dilute the objectives of the relevant conditions and/or overly complicate the auction framework. In changing the IECR, the process is "stand alone" and only to be used in exceptional circumstances providing greater clarity and certainty. We firmly believe that the consent process should be transparent and open to public consultation, but suitably sensitive to commercial interests. A consultation process would underpin the Authority's decision and should enhance confidences in the process. We are of the opinion that a closed process may produce undesirable consequences, such as increasing the potential for legal challenge.

The only condition we would place on this assertion is clarity that, in the event that this process is no longer required and Transco NTS is in a position to honour the volumes and lead times envisaged in the Licence, that the IECR is immediately modified and the consent process is removed.

It should be noted, however, that WWU is not clear why the consent process could not be incorporated into the UNC. Ofgem states in the Mod 0043 letter that a formal process could be established through the NTS GT Licence and potentially through the UNC. We wish to understand why the consent process relating to Mod 0036 could not also be enshrined in the UNC. The preference for the industry should be to incorporate the process into the UNC, via references made in the Licence, understanding that the UNC is able to be modified by any User (noting that the outcome of any consent process will directly impact Users).

We trust that you find our comments useful and if you have any questions please do not hesitate to contact Liz Spierling on 07899 066294 (liz.spierling@wwutilities.co.uk) or myself, Bob Westlake, on 029 2058 8290 (bob.westlake@wwutilities.co.uk).

Yours sincerely

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