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7<sup>th</sup> January 2011

Dear Bob,

**Re: UNC Modification Proposals 0277: “Creation of Incentives for the Detection of Theft of Gas (Supplier Energy Theft Scheme)” & 0346: “An Alternative to the Supplier Energy Theft Scheme based on Throughput”**

On behalf of RWE npower, I would like to thank you for the opportunity to respond to the above UNC Modification Proposals.

Whilst RWE npower acknowledges that the current industry arrangements for the detection of theft of gas will require change if suppliers are to be incentivised to become more proactive in this area, we do not agree that these proposals offer the best solution. In particular, they will not provide an industry-wide view of theft and access to information, and we do not consider that either version of SETS proposed would be compatible with the proposed National Revenue Protection Service, which is under active development at the moment.

We have a number of specific concerns about the Schemes outlined in these modification proposals, as follows:

- It will be impossible for suppliers to know what target they need to aim for under these schemes. The information about the total number of thefts will not be available until the end of the scheme year, and it is only at this point that the target numbers will be made clear. It is in our view unfair to expect suppliers to work towards an unknown target, given the financial implications of failing to detect sufficient theft under the scheme.
- Within the industry, there are different interpretations as to what constitutes a valid case of theft under the Gas Act, and who action can be taken against. As a consequence, there is doubt about what evidence would need to be provided in order for a discovery of theft to count under the Scheme.
- We are concerned that either version of this Scheme will place a significant administrative burden on suppliers in order to ensure that information is gathered and collected in a suitable format for use under the Scheme. New internal processes and systems will need to be put in place within our supply business to ensure that the information is captured in the necessary way. In our view, an implementation lead time of a minimum of 6 months, but preferably a year, would be needed if the Scheme is to go ahead.

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- The proposals carry significant customer implications, in that either of the Schemes will lead suppliers to treat more cases as theft than they currently do, simply in an attempt to meet their target. At present, suppliers do not treat all incidences of missing units as theft for various reasons, including difficulty in obtaining proof. It is recognised that tampering with a gas meter is relatively easy (substitute and reverse meters) and it is also easy to reverse the tampering without positive evidence of such an event being left behind. For this reason, suppliers currently often give customers the benefit of the doubt, however this will be less likely should either of the Schemes proposed be put in place. This in turn will lead to an increased number of customer complaints.
- It will be essential to have a standardised minimum approach to theft detection across the industry in order for either of the Schemes to work effectively and fairly. A Theft Code of Practice will be required, to which all industry parties participating in the Scheme must sign up, and this must be agreed and put in place before the Scheme commences operation. This will be particularly important to ensure a consistent approach to customers is adopted and that vulnerable customers are protected. We are involved in the joint DCUSA/SPAA working group which is currently drafting a Code of Practice, however the Code has not yet been agreed or formally brought within the governance of any industry agreements. Also, it is not clear how gas Industrial and Commercial Suppliers will be required to comply with the requirements of any Code of Practice, given that they are not signatories to the SPAA. One option may be for the Code of Practice to be a UNC-linked document, and that the UNC should mandate compliance with the Code of Practice.
- The costs of developing the invoicing arrangements under the scheme as set out in the ROM are significant and will add a sizeable sum to the overall costs on our business of detecting and investigating theft. We consider this to be counter-productive.
- The audit arrangements place a significant responsibility on the Transporter, in terms of making decisions as to whether or not a Gas Theft has occurred. Given the extent of this responsibility, we do not consider that the audit processes are sufficiently developed, nor the costs of this clear.
- It will be essential for better processes for notification/reporting of gas theft to be put in place in support of either of these Schemes. At the moment, the information received from Transporters is minimal.
- It is not clear how the scheme administration and audit costs will be met in the event that the Scheme is set aside in its entirety for a year as a result of a material event.

The legal drafting for these two Modification proposals was not published until 23<sup>rd</sup> December, and we have not therefore had as much time and opportunity as we would have liked to give this full detailed consideration and attention. The drafting has however raised a number of further questions and concerns, which we believe would need to be resolved before either version of the Scheme could be considered for implementation. We will be writing to you separately about the legal drafting, but the main points of concern are as follows:

#### Section AA

- para 2.1.3 – what is meant by “on the balance of probabilities”? (see comment above regarding the need for clarity over the interpretation of the definition of theft and who action can be taken against).
- Where will the audit take place? Will it just be a request for information or will a transporter require physical access to the data – if so, that should be at an agreed location and during normal business hours.
- How will information for the audit be required to be sent? What happens to the information after it has been provided for the purposes of the audit – will it be returned to the Supplier, and if so, within what timescales? More details

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are needed in order to ensure the security and confidentiality of our data.

- Under para 3.1.3, the Transporters appear to have a wide power to decide how complex an audit can be. Some limitation on the extent of the audit is needed. To achieve this, we would suggest including a provision that the Transporters should agree to meet our reasonable costs in the case of any complex audit.
- Para 3.1.6 – given that there will be a significant sum of money at stake under the Scheme, we think that there should be a right of appeal to Ofgem or some other body, it should not just be left to the Transporters to make the decisions here.
- Para 3.2.3(b) – this is very general, and it is not clear what other information the Transporters may seek to publish. In our view this power is too broad, and there should be a requirement that the Transporters only publish what has been agreed with suppliers.

I attach a confidential addendum which sets out some further information about the implications of the proposal for npower.

Given all the issues outlined above, RWE Npower does not support either Proposal 0277 or Proposal 0346.

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

Regards,

*Sent by email so not signed*

Sasha Pearce  
Dual Fuel Codes Manager  
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