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Dear Tim,

UNC 0243: Amendments to the process for initialisation of Enduring NTS Exit (Flat) Capacity at the Moffat NTS Exit Point

E.ON UK supports implementation of this proposal.

Nevertheless we consider it to be particularly unsatisfactory that this proposal has been submitted at such a late stage, especially given that discussions on alternative proposals have been ongoing ever since September 2007.

Although we understand that there have been discussions on this matter between Ofgem and the Irish regulators, it should have been possible for this issue to have been tabled much earlier. Consultations on Modifications UNC 0195 and UNC 0195AV closed out in April 2008 – so parties downstream had a reasonable amount of time to consider new arrangements at Moffat. Modification UNC 0243 deals with significant issues such as non discrimination and trade between member states of the EU so it warrants much more than a cursory assessment of a draft proposal at a Workstream.

As the proposer of UNC 0195AV we specifically did not consider matters downstream of Moffat or indeed the effectiveness or otherwise of the downstream capacity ticket arrangements that ensure alignment of capacity holdings either side of the flange at Moffat. This was because we felt that Ofgem would be unwilling to approve UNC 0195AV if different arrangements applied at interconnectors compared to other shipper NTS exit points. We did however consider that the daily off-peak capacity product would offer considerable benefits in the shipping of gas to Moffat as it ensured Irish shippers could continue hold 'interruptible' rights to facilitate the sourcing of 'spot' gas supplies to supplement or temporarily replace longer-term gas purchases. The UNC 0195AV arrangements are therefore less detrimental to Irish shippers than the UNC 116V proposals involving a discretionary rather than rules based release of daily off-peak capacity.

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We sympathise with the position that Irish participants find themselves in. The rules of an upstream regime have in effect been imposed on a downstream regime. This resulting misalignment of market rules seems to go against the spirit of ERGEG Regional Market initiative which specifically seeks to harmonise capacity arrangements particularly at interconnectors to facilitate trade and greater liberalisation of wholesale markets across Europe.

It is unfortunate that Ofgem continues to believe that it is not required to consider matters that affect parties outside Great Britain. In the UNC116V and UNC 116AV case the Competition Commission agreed with Ofgem with respect to the assessment of the costs of the proposal on parties downstream of Ofgem. Nevertheless we continue to believe that the impact of users of affected users of other Member States as well as other parts of the United Kingdom have to be properly evaluated. Our view was summarised in E.ON's submission to the Competition Commission;

“Costs in Ireland and the Isle of Man

Both the Decision and the FIA exclude costs of introducing Mod 0116V which are incurred in Northern Ireland and the Republic of Ireland: FIA 3.83 to 3.86; Decision, pp. 21-22. The argument given for this is that it would not be “appropriate” for GEMA “to take into account the downstream impacts and costs associated with implementation of Mod 0116 on customers in other jurisdictions” because its principal aim and statutory duties under the Gas Act concern the gas industry and consumers in Great Britain.

This is wholly inappropriate as a matter of policy; and if (as it appears) it is based on a belief that GEMA is not entitled to take these costs into account, it is an error of law.

Under the Marleasing doctrine the provisions of the Gas Act 1986 should be construed consistently with all relevant EU obligations. The Authority's principal objective under Section 4AA(1) is to protect the interests of consumers in relation to gas conveyed through pipes. There is no territorial limitation which limits this to consumers in Great Britain and excludes consumers in Northern Ireland or in the Republic of Ireland. Such a limitation is inconsistent with the policy of EU law in this context, including the Directive, and with the development of the internal European gas market. The only express territorial limitation in Section 4AA is found in subsection (2)(a). Excluding these costs also has no economic rationale in terms of assessing the efficiency and proportionality of Mod 0116A.

GEMA's proposal that a “single party purchaser” should be established at Moffat (a) does not remove the cost implications for parties in Northern Ireland, the Isle of Man and the Republic of Ireland; and (b) is objectionable on competition grounds.”

It also remains our view that interconnectors can be treated differently from other classes of offtake (in fact we believe direct connects, storage facilities, interconnectors and GDNs should each be treated differently as indeed they were prior to implementation of UNC 0195AV). This is because they are relevantly different - in the case of interconnectors they are different because they provide a link between the markets of two Member States of the EU, and gas is not consumed immediately downstream of the point of offtake, Moffat. Ireland is now dependent on the Irish interconnector for the majority of its gas supplies and therefore this link must be considered as part of the EU's strategic gas infrastructure. This in our view is a relevant difference.

We consider that UNC 0243 provides Moffat shippers and the Irish regulators more time to consider what arrangements need to be put in place to best meet the particular circumstances at Moffat. In respect to facilitating competition between shippers at Moffat we consider that the regime that existed prior to implementation of UNC 0195AV was better than the status quo (i.e. including UNC 0195AV), because it achieved an alignment of upstream capacity holdings with those downstream (the capacity ticket model). Given this proposal allows retention of these arrangements for another 2 years we consider that this will better facilitate the relevant objectives. This should in turn bring benefits to parties in the Isle of Man, Ireland including those that are citizens of the United Kingdom.

Yours sincerely

Peter Bolitho
Trading Arrangements Manager