

Modification Report
Release by Transco of the Supplier Identity to Gas Consumers and Suppliers
Modification Reference Number 0400

Version 1.0

This Modification Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

Modification of the Network Code is required to recognise that Transco may issue the supplier identity to gas consumers and suppliers on request to its 'M' number help desk.

2. Transco's Opinion

Transco has implemented a service whereby customers and/or suppliers are able to contact its 'M' number help desk requesting the identity of the incumbent supplier. Individual consent from all suppliers was obtained to enable this service to proceed. The purpose of seeking consent was to mitigate Transco's exposure to criminal prosecution under Section 42(i) of the Gas Act.

Transco raised Modification Proposal 0400 on 15 May 2000. The purpose of this was initially to establish in the Network Code provision that contracted parties are specifically aware that Transco may issue 'Protected Information' to consumers and suppliers which was originally provided to it by Users (shippers).

Since raising the Modification Proposal, significant developments have occurred within the industry which have led to Transco re-appraising the scope of the projected Network Code changes.

These are summarised as follows:

- Modification of Gas Act Section 42.
- Proposed introduction of Special Licence Condition 17(A) within Transco's PGT Licence.

Transco has therefore re-considered the scope of the Modification Proposal and believes it appropriate to mirror the changes to the Gas Act and to Transco's Licence.

Transco tabled the Modification Proposal at the SPA/Metering Workstream held on 25 May 2000. Transco proposed that, as this topic would need to be revisited following resolution of Section 42 of the Gas Act and the likely full implementation of the 'Access to Data' project, it may be preferable to provide an 'enabling clause' in the Network Code to permit the ongoing, timely release of relevant data.

Transco suggested that Workstream members should reply with any comments regarding its planned revision to the original Modification Proposal by 2 June 2000. Workstream members agreed that pending comments received and the development of appropriate legal text, Transco would submit a Workstream Report to the July 2000 Modification Panel with a recommendation that Modification Proposal 0400 'proceed to consultation'.

One response was received. The respondent sought an explanation of why Transco believed that the Modification was required. The respondent also commented that 'Protected Information' was not the 'same thing' as the release of the supplier identifier as originally proposed in the Modification. The Network Code defines 'Protected Information' as 'any information relating to the affairs of a User which is obtained by Transco pursuant to or in the course of the negotiation, implementation or performance of the Network Code' - which would encompass the supplier identifier. It is therefore appropriate that Transco should seek Modification of the Network Code to clarify that consent of the 'Protected Party', i.e. the User, exists prior to the issue of such information.

The respondent stressed that it would oppose consultation on the Modification without full legal text being made available. Transco therefore included appropriate drafting in its report to the Modification Panel. Transco duly submitted a Workstream report with respect to this Modification Proposal to the July 2000 Modification Panel meeting. The Panel voted that the Proposal 'proceed to consultation'. It was, however, agreed that Transco would not issue this Draft Modification Report until the associated proposed Special Licence modifications were issued for consultation.

3. Extent to which the proposed modification would better facilitate the relevant objectives

Implementation of this Modification Proposal is required to make the Network Code reflect changes to Transco's Licence which require Transco to issue 'Protected Information' to non-Network Code parties.

The implementation of measures which enable Transco to provide industry access to relevant information is consistent with its relevant objective of facilitating competition in the gas market.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

None identified.

b) development and capital cost and operating cost implications:

None identified.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

Not applicable.

d) analysis of the consequences (if any) this proposal would have on price regulation:

None identified.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

None identified

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

None identified.

7. The implications of implementing the Modification Proposal for Users

Implementation of this Modification Proposal will clarify that Transco may issue 'Protected Information' originally provided by Users where required under its Licence.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party

Implementation of this Modification Proposal will ensure integrity of the contractual regime between Transco and Users and facilitate the release of data to non-Network Code parties. It will also facilitate consumers transfer to alternative suppliers.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

Implementation of this Modification Proposal will ensure that the Network Code is consistent with the Gas Act and Transco's Licence with respect to the release of data by Transco.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages:

Primarily the implementation of this Modification Proposal will facilitate customer transfer. It will also ensure that Network Code contracted parties are aware that Transco may issue 'Protected Information' to non-Network Code parties which was originally provided to it by Users.

Implementation of the Proposal reduces the likelihood of customers asking shippers for supplier's identification.

Disadvantages:

None identified.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Ten representations were received with respect to this Modification Proposal. Four respondents agreed to the implementation of the Proposal, six were supportive of its objectives and one was opposed.

BP, Aquila Energy, Corus and the Association of Electricity Producers (AEP) support implementation of the Modification Proposal. AEP and Corus suggest that improved consumer access to relevant transportation data will facilitate consumers management of gas supply to their sites by reducing the incidence of data discrepancy, erroneous transportation charges and aiding the preparation of tender packs for gas supply. They also add that competition in the gas market will be facilitated through implementation of this Modification Proposal.

Transco concurs with the points raised.

Powergen suggests that it is happy for customers and/or suppliers to be given access to 'protected information' on customer and meter details, as it believes that this clarified Transco's legal position and the risk to involved parties is small.

Transco notes this point.

Protected Information

BGT, Shell Gas Direct and Alliance Gas believe that information should not be released if it is not in the commercial interest of a shipper to do so. On this basis, BGT suggests that Transco should be given the discretion to refuse to disclose information. It recommends that under these circumstances, Transco refer this matter to Ofgem for determination. Whereas Shell Gas Direct and Alliance believe that

suppliers should decide whether publishing their identity could affect their commercial interest. Shell Gas Direct suggests that the incumbent supplier should have the option to prevent Transco releasing their identity.

Transco's response is that it is unable to identify what information is in the individual shipper's commercial interest and the legal text within the Modification Proposal merely outlines the obligations on Transco and aligns the Network Code with the licence amendment. The Modification Proposal provides the ability (under Licence Condition 17A) for Transco to refer to Ofgem, if Transco is unsure as to whether information has been reasonably requested on behalf of a consumer.

Two respondents (BGT and Shell Gas Direct) expressed the view that the definition of 'Protected Information' is too broad, which could potentially result in the release of commercially sensitive information. BGT further notes that the information should be restricted to information necessary to facilitate consumers contracting with another supplier or in order to identify the supplier to the customer's premises. Shell Gas Direct suggests that any changes to the Network Code should specify what categories of information Transco should make available to such customers and also the extensive information that shippers must have confidence will not be made available by Transco.

Transco's response is that the 'Protected Information' to be released to customers is clear. In the non-domestic market Licence Condition 17A (i-iv) covers the purposes for which information is released. Transco has also included (as an appendix to this report) the list of the data items which are provided for non domestic Supply Points through its Internet based information server, which is not anticipated to be extended at this time. In the domestic market the information to be released to customers is more restrictive, Licence Condition 17A (iii-iv) covers the purposes for which the data can be used. The information relating to domestic Supply Points can only be accessed by customers through the 'M' number helpdesk.

Alliance Gas raised concern over the reference to the term 'other relevant party' in the amended drafting as it is potentially very wide ranging.

Transco's response is that of the term 'other relevant party' aligns the Network Code with Licence Condition 17(A). As per the licence wording a 'relevant party' is a relevant gas supplier or a party acting on behalf of the customer.

Three respondents questioned the process to be used by Transco to ensure that information was only released to that shipper/suppliers customer. Shell Gas Direct asked for more transparency about the checks that Transco will deploy to ensure that the appropriate categories of information will only be disclosed to that shippers/suppliers customer. Scottish and Southern Energy notes that although it would be beneficial for Transco to advise customers telephoning the M- number helpline of the identity of their supplier, rather than their shipper, it highlights that it is important that Transco has a robust process in place to ensure that the service is not

abused in any way, and that only bona fide queries from customers are dealt with. BGT requested clarification on what mechanism Transco would employ to ensure that the proposed information is disclosed only to the appropriate party.

Transco's response is that the process used for facilitating the release of data to domestic consumers can include where necessary, requesting information that would only reasonably be known by the occupier of the premises e.g. Meter Serial Number.

Data Accuracy

Shell Gas Direct supports the intent of making arrangements that will provide customers with greater ability to detect and make arrangements for amending inaccurate data.

YE noted it's concern that when a customer or supplier discovers that data held by Transco is incorrect, corrections must be relayed to the incumbent shipper as it is the shipper which bears financial liabilities from changes to Transco's data and this could lead to them incurring costs without the ability to control or mitigate them. It was suggested, therefore, that Transco must inform shippers of changes to protected information as soon as reasonably practicable. YE also suggested that the possible provision by Transco of inaccurate consumer data could damage shipper relationships with the customer.

Powergen requested that this Modification was not extended to rights to make changes to the data, as any changes could affect the shippers balancing position. Powergen suggests that if it is necessary to make such changes, then this should be via a formal contractual process through the shipper.

Transco acknowledges the comments and would highlight that the Modification Proposal does not extend to rights to make changes to the data. In the instance where data discrepancies are identified, these will be communicated through the established contractual chain via the shipper which will be responsible for notifying Transco as per it's Licence (Condition (7)) and Network Code (M3.2) obligations.

Transco agrees with YE that the provision by Transco of inaccurate data is potentially damaging to shipper relationships and therefore data accuracy could potentially be improved through the provision of information to consumers and 'other relevant parties'.

Proposed Licence Condition

AEP and Corus are supportive of linking the Network Code to the Special Licence Condition 17(A) to ensure that the Network Code is consistent with Transco's licence. They note that this will avoid a two stage consultation process when further data items are added to Special Condition 17(A). AEP would welcome an extension of this unified approach for other issues.

Transco's response is that there are no specific data items within the Licence Condition 17(A) only purposes for which released information can be used in the domestic and non domestic market.

Transco has received several comments raising concern regarding Licence Condition 17A change, however the purpose of this Modification Proposal is to align the Network Code relevant provisions with the amended licence condition. The Modification Process is such that Transco can only respond to representations to the Modification Proposal. Transco presumes that shipper comments with regard to licence Condition 17A will have been directed to Ofgem as part of the consultation process.

Shell Gas Direct noted that the changes proposed to Transco's licence should be limited so that only three categories of information can be release to third parties. Firstly, information as to the identity of a site's supplier (and only to the relevant customer). Second, information as to the site specific data. Third information about Transcos pipeline system.

Transco's response is that the Licence Condition 17(A) is quite specific about the purposes for which information released for the domestic and non domestic market can be used. The only data items which are currently released in the domestic market are the supplier identification and the Meter Point Reference Number. The data items to be released in the non domestic market are listed in the appendix attached to this report.

Scottish and Southern Energy suggests that it would be appropriate for the Network Code to be amended in such a way so that any future modifications to the licence condition will automatically be incorporated into the Code going forward, thus avoiding the need for Network Code modifications every time.

Transco acknowledges this comment but believes that it would not be feasible for automatic modification to be made as any proposed modification to the Network Code must be subject to a formal consultation process.

Shell Gas Direct highlighted its concern at the introduction of a regime which extends beyond the objectives within the Modification Proposal and where Ofgem and Transco could without the agreement of - or formal consultation with - shippers/suppliers, make changes to Transco's licence that would have the immediate effect of allowing Transco to disclose information that shippers/suppliers may consider should be 'protected'. Shell Gas Direct considers that the drafting now proposed should be specific to the limited scope of the change made to Transco's licence, as a result of Ofgems recent consultation.

Transco's response is that since raising the Modification Proposal it widened the scope of the Proposal (under 11.4 of Modification Rules) to better facilitate

achievement of the relevant objectives by securing effective competition between relevant suppliers.

Transco also notes that further information which may be released after discussion with Ofgem will only be released to consumers for the purposes listed within Licence Condition 17(A).

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Implementation of this Modification Proposal is required to ensure that the Network Code is consistent with The Gas Act and proposed Special Licence Condition 17(A).

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

This proposal is not required to facilitate any such change.

14. Programme of works required as a consequence of implementing the Modification Proposal

No works are required to implement this proposal.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

This Modification Proposal should be implemented immediately following approval by Ofgem.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this Modification Proposal be implemented.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

19. Text

Principal Document Section V.

Amend as follows:

V5.5.3 Nothing in paragraph 5.1 shall apply to the disclosure by Transco of Protected Information:

“(vii) to a consumer or other relevant party to the extent designated by the Director within Special Condition 17A of the Transco Licence.”

Signed for and on behalf of Transco.

Signature:

Tim Davis
Manager, Network Code

Date:

Gas and Electricity Markets Authority Response:

In accordance with Condition 9 of the Standard Conditions of the Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0400**, version **1.0** dated **06/01/2009**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **1.0**.

Signature:

Process Manager - Network Code

Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:
 - (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or
 - (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriateprovided that if the Authority does not so approve the Agreement then Clause 3 shall apply.
2. If the Authority does so approve this Agreement in accordance with the terms of the Order (whether such approval is actual or deemed by effluxion of time) any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.
3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, had it not been repealed, would apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) or 2(2)(b)(ii) of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.
4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.