

Draft Modification Report
0253 Non-User Access to Certain Protected Information

This draft 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:

In response to the Association of Public Gas Transporters (PGT's) request to Transco to provide supporting information, Transco's Commercial Department have raised Modification 0253 Non-User Access to Certain Protected Information. Supporting information will be provided when network quotations are made with respect to shallow reinforcement quotations and Capacity Commitment Agreements. In order to comply with Network Code provisions this will be in the form of network 'spider' diagrams. These diagrams contain Network Code protected information and, since other PGT's are not signatories to the Code, they are not bound by its confidentiality. A separate Confidentiality Agreement must be entered into before this information can be released to a PGT by Transco.

2. Transco's opinion:

A confidentiality agreement between Transco and other PGT's will allow sufficient supporting information to be provided when network quotations are made with respect to reinforcement quotations and Capacity Commitment Agreements. Supporting information is required in order to justify charges, and thereby demonstrate fulfillment of the objectives of economic and efficient development of the system, under a shallow connections charging policy as stated in Transco's condition 5 statement.

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

The agreement facilitates competition in connections by enabling third parties access to agreed supporting information. This proposal enables information to be provided in a controlled manner.

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

a) implications for the operation of the System:

Transco is not aware of any such implications.

b) development and capital cost and operating cost implications:

Transco is not aware of any such implications.

- 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:**

Not applicable.

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:**

Transco is not aware of any consequences.

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

Transco is not aware of any implications.

7. **The implications of implementing the Modification Proposal for Users:**

The Confidentiality Agreement will allow certain parties access to restricted information, which otherwise they would not be entitled to have.

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

Transco has not been informed of any such consequences.

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:**

There will be additional contractual obligations between Transco and Non-Network Code parties with the signing of the Confidentiality Agreement. In order to secure Transco and User interests with respect to Network Code Protected Information, the release of such information should be subject to a confidentiality agreement between Transco and the Non Network Code party to whom information is given.

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

Advantages

The development and acceptance of a standard confidentiality agreement ensures that Users' interests are maintained. The agreement facilitates competition in connections by enabling third parties access to agreed supporting information.

Disadvantages

None.

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

No written representation have been received as yet.

Transco Response:

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

Not applicable.

13. **The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 3(5) of the statement; furnished by Transco under Standard Condition 3(1) of the Licence:**

Not applicable.

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

Transco is in the process of circulating the proposed Confidentiality Agreement to other Public Gas Transporters. The agreements will need to be signed if the Modification is implemented. Upon receipt of signed agreements, Transco Commercial will make the necessary amendments to the Connections Policy Manual and publish the updated policy to all affected departments.

15. **Proposed implementation timetable (inc timetable for any necessary information systems changes):**

As soon as Network Code Modification 0253 is implemented. Transco anticipate this will be mid January 1999.

16. **Recommendation concerning the implementation of the Modification Proposal:**

Transco and the Capacity Workstream recommend that the Network Code is modified as detailed in this report.

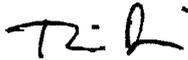
17. **Text :**

See accompanying Confidentiality Agreement and Legal text.

Representations are now sought in respect of this Draft Report and prior to Transco finalising the Report.

Signed for and on behalf of Transco.

Signature:



Tim Davis
Manager, Network Code

Date: 09/12/98

TO BE CHANGED

MODIFICATION 0253

NON USER ACCESS TO PROTECTED INFORMATION

LEGAL TEXT

Section V

Paragraph 5

Amend as follows:-

"5.1.2 "Transco Activities" means the carrying on of transportation business (as defined in the Transco Licence), the operation, administration, maintenance and development of the System and the BG Storage Facilities, facilitation of connections to the System, and the implementation and performances of the Code, the Framework Agreement, any Ancillary Agreement and any Siteworks Contract."

Paragraph 5.5.2 (f)

Add a new paragraph V5.5.2(g) to read:-

"(g) to the disclosure of any Protected Information to any person proposing to make a connection directly or indirectly to the System, where and to the extent that the disclosure of such information is reasonably required for the purposes of supporting Transco's charges or requirement to allow such proposed connection to the System to be made and provided that the person to whom the information is to be disclosed is informed in writing of the confidentiality of such information and that prior to disclosure, such person has entered into a confidentiality agreement with Transco which prohibits use or disclosure of such Protected Information in terms no less onerous than those contained in this Section V paragraph 5".

COPY OF AGREEMENT FOR MODIFICATION 0253
NON USER ACCESS TO CERTAIN PROTECTED INFORMATION DATE:
12.02.9904.12.98

THIS AGREEMENT is made on the day of 1998

BETWEEN:

(1) **BG plc** whose registered office is at 100 Thames Valley Park Drive, Reading, Berkshire, RG6 1PT, Registration No. 2006000 ("Transco")

and

{(2) [] whose registered office is at [],
Registration No. [], ~~acting in its capacity as a public gas transporter~~(the
"PGTCONNECTING PERSON").}

WHEREAS

A. The PGTCONNECTING PERSON is an entity which wishes from time to time to facilitate the connection of its pipeline system to the pipeline system of Transco's.

{B. Transco has in its possession network analysis diagrams which may contain detailed and confidential information pertaining to Supply Point Oftake rates and localised system pressure derived therefrom and their relationship to the proposed connection point.}

C. The PGTCONNECTING PERSON wishes Transco to disclose such information to enable the PGTCONNECTING PERSON to assess specific system reinforcement requirements in respect of connection to the Transco pipeline system and in support of charges levied for such reinforcement.

- D. Transco is prepared to disclose such information to the PGTCONNECTING PERSON for such purpose pursuant to the provisions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:-

1. **DEFINITIONS**

"Affiliate": means any subsidiary or holding company or any other subsidiary of any such holding company, for which purposes "subsidiary" and "holding company" shall have the meaning ascribed to it under Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989.

"Directive": any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority (but only, if not having the force of law, if it is reasonable in all the circumstances for it to be treated as though it had legal force), and any modification, extension or replacement thereof;

"Competent Authority": the Director, or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the European Communities which has jurisdiction over Transco or the PGTCONNECTING PERSON.

"Legal Requirement": Any Act of Parliament, regulation, licence, or Directive of a Competent Authority;

"Permitted Purpose": the sole purpose of enabling the PGTCONNECTING PERSON to assess specific pipeline system reinforcement requirements in respect of connection to the Transco pipeline system and Ccharges levied for such reinforcement.

"Protected Information": shall be given the meanings ascribed thereto in Recital B of this Agreement.

"PGT Licence": a licence granted or treated as granted under Section 7(2) of the Act.

"Secundee": an employee of an Affiliate of the CONNECTING PERSON who is on secondment within the organisation of the CONNECTING PERSON.

"The Act": the Gas Act 1986, as amended by the Gas Act 1995 and as otherwise amended;

"Transco Licence": the Public Gas Transporter's Licence as granted to BG plc, as from time to time in force.

A reference to any Legal Requirement shall be construed, at any particular time, as including a reference to any modification extension or re-enactment (before or after the date of this Agreement) of that Legal Requirement in force at that time.

A reference to the Act includes where the context permits a reference to Regulations made pursuant to the Act.

Headings in this Agreement shall not affect the interpretation of this Agreement.

2. **PGTCONNECTING PERSON OBLIGATIONS**

2.1 The PGTCONNECTING PERSON shall secure that Protected Information is not:

(a) disclosed to any person other than:

(i) an officer, or employee of the PGTCONNECTING PERSON or Secundee whose province it is to know the same, or

(ii) a professional adviser of or consultant to that PGTCONNECTING PERSON, or

in any such case in accordance with the requirements of Clause 4; or

(b) used by such PGTCONNECTING PERSON or Secundee for any purpose other than the Permitted Purpose, nor used by the PGT'sCONNECTING PERSON'S professional adviser or consultant other than to advise the PGTCONNECTING PERSON in relation thereto.

2.2 The CONNECTING PERSON shall at all times maintain and keep available for inspection by Transco an up-to-date register of (i) the identity of each Secundee to whom the CONNECTING PERSON discloses Protected Information; (ii) the identity of such Secundee's Affiliate employer; (iii) a description of the Protected Information so disclosed; (iv) the date of such disclosure; (v) the identity of the employee or officer of the CONNECTING PERSON who has made such disclosure to the Secundee.

3. **PROTECTED INFORMATION**

3.1 Information obtained by a PGTCONNECTING PERSON in the course of any negotiation or discussions with Transco shall be Protected Information only insofar as such information was obtained in writing.

4. **TERMS OF PERMITTED DISCLOSURE**

Where Protected Information is disclosed by the PGTCONNECTING PERSON as permitted under Clause 3.2, the PGTCONNECTING PERSON shall (without prejudice to its obligation under Clause 2) take all reasonable steps to secure that the person to whom the information is disclosed:

- (i) is aware of the ~~PGT's~~CONNECTING PERSON'S obligations under Clause 2 in relation thereto, and
- (ii) does not use or disclose the information other than as is permitted of such Party in accordance with Clause 2.

5. **EXCEPTIONS**

5.1 For the purposes of this Clause 5 the "Protected Party" is the Party (either Transco and/or any other person) to whose affairs any Protected Information relates.

5.2 Nothing in Clause 2 shall apply:

- (a) to the disclosure or use by the ~~PGT~~CONNECTING PERSON of Protected Information to which the Protected Party has consented in writing;

- (b) to any Protected Information which:

- (i) before it is obtained by the ~~PGT~~CONNECTING PERSON is in the public domain; or

- (ii) after it is obtained by the ~~PGT~~CONNECTING PERSON enters the public domain,

in either case otherwise than as a result of a breach by the ~~PGT~~CONNECTING PERSON of its obligations under Clause 2;

- (c) to the disclosure of any Protected Information to any person if and to the extent that the ~~PGT~~CONNECTING PERSON is required to make such disclosure to such person:

- (i) in compliance with the duties of the PGTCONNECTING PERSON under the Act or any other requirement of a Competent Authority; or
 - (ii) Where the CONNECTING PERSON is a PGT, in compliance with the conditions of the PGT Licence held by the PGT or any document referred to in such licence with which the PGT is required by virtue of the Act or such licence to comply; or
 - (iii) in compliance with any other Legal Requirement; or
 - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers;
~~or~~
 - ~~(v) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Disclosing Party; or~~
- (d) to any Protected Information to the extent that the PGTCONNECTING PERSON is expressly permitted or required to disclose that information under the terms of any agreement or arrangement made with the Protected Party or to which it is party;
- (e) to the disclosure of Protected Information to any lending or other financial institution proposing to provide or arrange the provision of finance to the PGTCONNECTING PERSON, where and to the extent that the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such finance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the Protected Party to maintain the confidentiality of such information;

- (f) to the disclosure of any Protected Information to the Director, where the PGTCONNECTING PERSON considers in good faith that the Protected Party may be in breach of a condition of its Licence to the extent reasonably necessary to draw such possible breach to the attention of the Director.

6. **TRANSCO LICENCE**

Nothing in this Agreement shall be construed as requiring Transco to disclose or use any information in breach of any requirement of the Transco Licence.

7. **DATA OWNERSHIP**

The owner of data in the Protected Information (whether Transco or any other person) shall retain ownership of such data.

8. **SURVIVAL**

In respect of the Protected Information disclosed by Transco, ~~the provisions of~~ Clauses 1 to 5 of this Agreement shall continue for a period of ~~{5}~~ years from the date of such disclosure ~~PGT has ceased to hold a PGT Licence irrespective of the reason for such cessation.~~

9. **WAIVER**

No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term on condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under this Agreement.

10. **LAW AND JURISDICTION**

This Agreement shall be governed by English Law and the English Courts shall have exclusive jurisdiction in respect of this Agreement.

IN WITNESS whereof the duly authorised representatives of the parties have executed this agreement on the day and year first before written.

SIGNED for and on behalf of
BG plc

SIGNED for and on behalf of
[]

Signature:

Signature:

Name:

Name:

Title:

Title:

In the presence of:

Signature:

Signature:

Name:

Name:

Title:

Title: