

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

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:

In response to the Association of Public Gas Transporter's (PGT's) request to Transco to provide supporting information, in the form of 'network spiders' when providing connection quotations, Transco has raised Modification 0253 Non-User Access to Certain Protected Information.

Supporting information will be provided when network quotations are made with respect to reinforcement quotations and including any which require Capacity Commitment Agreements. Spider diagrams contain Network Code protected information and, since potential recipients of such Protected Information (including other PGTs) are not signatories to the Code, they are not bound by its confidentiality. Therefore, a separate Confidentiality Agreement must be entered into before this information can be released to any such recipient by Transco.

As PGTs are most likely recipients this Modification report refers to PGTs although this reference should also cover any recipient.

2. Transco's opinion:

A confidentiality agreement between Transco and other PGT's will allow sufficient supporting information to be provided when quotations are made which include reinforcement quotations (and Capacity Commitment Agreements). Supporting information may be required by PGT's in order to support any charges, and demonstrate Transco's compliance with the objectives of economic and efficient development of the system, or shallow connections policy as stated in its condition 5 statement.

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

The agreement facilitates competition in connections by enabling non Network Code signatories access to certain information. This proposal enables information to be provided to PGTs in a controlled manner, protecting User interests.

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 non Network Code signatories access to information in support of the charge for the proposed connection.

Disadvantages

Transco will be required to maintain the agreements and take steps to ensure that they are complied with. There will be additional administration costs for both Transco and other PGTs.

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

Representations have been received from a PGT (Southern Electric Pipelines Limited) and three Shippers, (BP Gas Marketing, British Gas Trading and Scottish Hydro-Electric) of whom all parties broadly support this Modification, but request amendments and inclusions in the Confidentiality Agreement. The Confidentiality Agreement has been discussed with the Independent PGT's within the current Network Exit Agreement (NExA) discussions, and the output of these discussions is detailed in Transco's response below.

Transco Response:

BP Gas Marketing supported the proposal and requested no specific changes.

British Gas Trading (BGT) supported the proposal, but raised a number of detailed points on the legal drafting and draft Agreement.

BGT suggested adding "relevant" before "Protected Information". Transco's view is that the word "relevant" is not necessary because the definition "Protected Information" is already qualified by reference to the rest of the text.

BGT suggested words "acting in its capacity as a Public Gas Transporter" be removed since the obligations should apply regardless of what capacity the party was acting in. These words have now been removed.

BGT suggested the word "solely" be inserted after "purpose of" in the definition of Permitted Purpose. This has been included.

BGT suggested deleting "only insofar as such information was obtained in writing" in Clause 3 of (Protected Information). Transco's view is that since much of this information is in diagrams, in practice it will be provided in writing. In any event the wording reflects section V.5.3.2 (a) of the Network Code which has already accepted this concept, and which in practice facilitates monitoring and enforcement of the agreement.

BGT suggested that the reference in the first line of Clause 4 (Terms of Permitted Disclosure) should be to Clause 2 not Clause 3. Transco agrees and the relevant text has been amended.

BGT suggested that within Clause 4 (Terms of Permitted Disclosure) the requirements of Clause 4 (i) and (ii) should apply to any disclosure of Protected Information. Transco's view is that Clause 4 does make it clear that it applies to any disclosure of any Protected Information.

BGT suggested that Clause 5.1 be amended to make it clear that the Protected Party can be Transco and/or any other person. Transco has amended the relevant text.

BGT suggested that the square brackets be removed around "5" in Clause 8. Transco has amended this text.

BGT suggested that the Agreement should contain a requirement for information to be returned to Transco on demand. Therefore if a project did not proceed, Transco would have the right to recover the information disclosed. Transco has not included a provision requiring information to be returned to Transco on demand because this concept was not contained within Section V of the Network Code and would be an additional obligation to that already accepted as satisfactory to Shippers in relation to treatment of confidential information under Network Code. It would also require detailed drafting relating to the description of projects and the procedures for return, which Transco believes is unnecessary.

Scottish Hydro-Electric (SHE) agreed in principle to the Modification but raised a number of issues. These are set out below, together with Transco's response.

SHE suggested the term "Certain Protected Information" should be more clearly defined. Transco believes it is already sufficiently defined.

SHE expressed concern that Protected Information (by reason of the Modification Proposal) could be passed to non PGT's as well as PGTs. This is correct and necessary if Transco is to be entitled to disclose to non PGTs that may wish to compete in the market.

The Legal Text of this Confidentiality Agreement had originally been written as an agreement with PGTs to cover disclosure of the Protected Information to them. It was always intended that an identical agreement would be in place for the disclosure to non PGTs. It should be noted that after some further consideration, Transco has decided for reasons of simplicity and consistency that this Confidentiality Agreement

is redrafted so that it can apply for the disclosure to any "Connecting Person" not just PGTs. The drafting now reflects this. As a result there are some minor drafting changes in the agreement to reflect this. See Clause 5.2 (c) (ii) and Clause 8.

SHE stated that third parties could be involved in project development and thus the recipient would need to disclose to third parties such as joint venture partners. It is recognized by Transco that the recipient Connecting Person may wish to disclose to third parties. This is prohibited with the exception of the limited disclosures in Clause 2 and the exceptions in Clause 4.

Further comments were received from **Southern Electric Pipelines Limited (SEPL)**. These are set out below, together with Transco's response.

SEPL queried whether the Agreement should be with a non PGT. As stated above, in accordance with the Modification Proposal and the Legal Text, the Agreement might be with a non PGT and therefore Transco has drafted it to reflect this possibility.

SEPL suggested that the term "Agreement" needs to be defined. Transco believes it is clear that the Agreement is the one document and there is no need for a specific definition.

SEPL requested that this Agreement permits disclosure by the PGT to employees of parent, subsidiary and sister companies. SEPL argue that this inclusion is essential as employees in their group of companies may need access to Protected Information for the Permitted Purpose.

Drafting has now been proposed to reflect this. However, Transco appreciates that it is an important deviation from the original text. Transco is also aware that the entitlement to disclose to employees of a possible shipper affiliate may raise a compliance issue for Transco and PGTs. Accordingly Transco has included additional text in Clause 2.2 to place an onus on the Recipient to maintain a register.

A concern of SEPL was that the term "on secondment" implies exclusivity of services for a specific period of time. There is no limit on the duration of the secondment, it is simply a definition term to reflect employment of a person by another company working within the Connecting Person's organisation. However, Transco's view is that the key principle is that Protected Information disclosed to the Seconded should be used only for the Permitted Purpose.

SEPL requested the deletion of Clause 3 on the grounds that it is far too wide as it implies that Protected Information obtained as a result of negotiations or discussions of any kind are to be captured under this Agreement whereas this Agreement is to protect Protected Information disclosed by Transco pursuant to Recital 3. Transco believes that Clause 3 should be retained since it covers the possibility of disclosure during discussions and negotiations. This is a replica of the provision in the Network Code.

SEPL suggested the Protected Party in Clause 5 should only be Transco. Transco's view is that this change is not acceptable as the Protected Party may well be a Shipper not just Transco. This reflects the basis of the Modification proposal and the Confidentiality Agreement.

SEPL requested the inclusion of two more exceptions within Clause 5 i.e. information in prior possession and lawfully received from a third party. Transco's view is that this is adequately covered by Clause 5.2 (d), and the SEPL proposal is a departure from the exceptions contained in the Network Code.

SEPL requested the deletion of Clause 5.2 (c) (v) on the basis that this is already covered by Clause 5.2 (c) (i) and (iii). Transco agrees and has amended the text accordingly.

SEPL suggested that the period within Clause 8 be reduced from five years to two years which is an adequate and a reasonable period. No other respondent has challenged five years as a reasonable period and therefore Transco would suggest that five years remains acceptable.

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 will circulate the proposed Confidentiality Agreement when agreed pursuant to this Modification proposal to persons who wish to receive Protected Information. Information will only be provided to such persons when the Confidentiality Agreement is signed. Upon receipt of signed agreements, Transco will make the necessary amendments to the Connections Policy Manual.

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

Transco propose implementation as and when the Modification proposal is approved by Ofgas.

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. **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:**

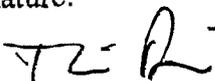
This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Director General in accordance with this report.

19. **Text:**

See accompanying Confidentiality Agreement and Legal text.

Signed for and on behalf of Transco.

Signature:



Tim Davis
Manager, Network Code

Date: 12-3-99

Director General of Gas Supply Response:

In accordance with Condition 7 (10) (b) of the Standard Conditions of Public Gas Transporter's Licenses dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference 0253, version 2.0 dated 15/02/99) be made as a modification to the Network Code.

Signed for and on behalf of the Director General of Gas Supply.

Signature:



K.S. O'HARA
Head of Connections
Transco
Final Network Code Modification Report

Director of Transportation Regulation

Date:

The Network Code is hereby modified, with effect from [], in accordance with the proposal as set out in this Modification Report, version 2.0.

Signature:

**Process Manager - Network Code
Transco**

Date:

ANNEX

Restrictive Trade Practices Act - Suspense Clause

For the purpose of the Restrictive Trade Practices Act 1976, this document forms part of the Agreement relating to the Network Code which has been exempted from the Act pursuant to the provisions of the Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996. Additional information inserted into the document since the previous version constitutes a variation of the Agreement and as such, this document must contain the following suspense clause.

1. Suspense Clause

- 1.1 Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangements is subject to registration under the Restrictive Trade Practices Act 1976 shall not come in to effect:
- (i) if a copy of the Agreement is not provided to the Director General of Gas (the “director”) within 28 days of the date of which the Agreement is made; or
 - (ii) to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraph 2(3) of the Schedule to The Restrictive Trade Practices Act (Gas Conveyance and Storage) Order 1996. Provided that if the Director does not so approve the Agreement then Clause 1.2 shall apply.
- 1.2 Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangements is subject to registration under the Restrictive Trade Practices Act 1976 shall not come in to effect until the day following the date on which particulars of this Agreement and of any such arrangements have been furnished to the Office of Fair Trading under Section 24 of the Act (or on such later date as may be provided for in relation to any such provision) and the parties hereto agree to furnish such particulars within three months of the date of this Agreement.

MODIFICATION 0253

NON USER ACCESS TO CERTAIN 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 Offtake 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 Charges 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 the 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.

