

**Modification Report**  
**Temporary Waiver of Two Months Notice Period to Effect a Change to**  
**Transco's Transportation Charges**  
**Modification Reference Number 0536**  
Version 2.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

**1. The Modification Proposal**

If this Modification Proposal is implemented, it is proposed that the transitional document of the Network Code is amended to specify that the provisions of Section B1.8.2 are waived from the date of implementation of this proposal (which Transco requests shall be as soon as is reasonably practicable and no later than 1 April 2002) through to 30 April 2002 inclusive.

Section B1.8.2 requires that not less than two months notice be provided by Transco prior to implementation of any revised Transportation Charges.

**2. Transco's Opinion**

To implement Ofgem's final proposals for Transco's NTS System Operator (SO) incentives 2002-2007 it will be necessary for amendments to be made to Transco's Gas Transporters (GT) Licence. Inter alia, these amendments relate to the nature of transportation arrangements and the charges to be made by Transco in pursuance of transportation arrangements.

Transco's revised NTS SO incentives will commence on 1 April 2002. Subsequently, Transco believes it is necessary to waive the two month notice period normally required for changes to Transportation Charges to enable timely implementation of Ofgem's proposals.

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

Revisions to Transportation Charges would be made to enable Transco to comply with its GT Licence provisions. Therefore, Transco believes that this Modification Proposal would facilitate compliance with the relevant objective contained within Standard Condition 9(1)(b), i.e. the efficient discharge of Transco's obligations under its GT Licence.

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

**a) implications for the operation of the System:**

Transco does not anticipate that the implementation of this proposal would have any impact upon the operation of Transco's System.

**b) development and capital cost and operating cost implications:**

Transco does not anticipate 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:**

This proposal is required to facilitate the timely implementation of Ofgem's proposals in respect of Transco's NTS SO incentives.

**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**

It is not anticipated that there will be a change to the level of contractual risk to Transco as a consequence of this proposal.

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

Transco does not anticipate any development implications in respect of the computer systems of Transco or the related computer systems of Users.

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

The implementation of this proposal would create uncertainty for Users in respect of the level of Transportation Charges from 1 April 2002.

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

If this proposal is implemented amendments to Transco's Transportation Charges would be implemented rapidly due to the two month notice period being waived. This could create some price uncertainty for consumers in respect of 1 April 2002 if Users adjust their pricing structures in response.

**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**

Transco does not believe there would be any consequences on the legislative and regulatory obligations or contractual relationships of Transco, Users and Non-Network Code parties as a result of implementing this Modification Proposal.

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

Advantages:

- Timely implementation of revised Transportation Charges and alignment with the proposed implementation of Transco's NTS SO incentive schemes, i.e.1 April 2002.
- Alignment of implementation dates may provide the industry with an element of certainty in respect of changes to the regime arising from Ofgem's proposals.
- Timely implementation of changes to Transportation Charges would avoid the possibility of the NTS SO incentive regime being implemented on 1 April with a two month delay before revisions to the relevant Transportation Charges could be made.

Disadvantages:-

- Users will have less than two months notice of changes to relevant Transportation Charges.

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

The following respondents submitted representations in respect of this Modification Proposal:

<b>Respondent</b>	<b>Reference</b>
Corus UK Ltd	Corus
Association of Electricity Producers	AEP
BP UK Gas and Power	BP
British Gas Trading Ltd	BGT
Dynegy UK Ltd	Dynegy
Scottish and Southern Energy	SSE
Shell Gas Direct	SGD
Innogy plc	Innogy

The table below provides a summary of the representations made by Shippers:

Shipper Reference	Support for Proposal		Summary of comments
	Yes	No	
Corus	✓		<p>Reluctantly support the proposal. It is pointless delaying the inevitable and creating a requirement to increase Transportation Charges in May because of loss of revenue in April.</p> <p>The rules regarding implementation of revised Transportation Charges were incorporated in the Network Code for reasons of good governance. Ofgem and Transco are requested to work together in the future within a common and focussed timetable that enables compliance with the Network Code.</p>
BP	✓		<p>Support this proposal.</p>
AEP		✗	<p>This Modification Proposal has been raised due to Ofgem's delay in publishing its proposed amendments to Transco's licence to introduce the NTS SO incentive scheme. If Ofgem had maintained its timetable for the publication of the licence changes there would not be a need for the Modification.</p> <p>Removing notice periods for changes to Transco's Transportation Charges creates uncertainty, both over the level of charges from 1 April and over the likelihood of such waivers being used again. Uncertainty over costs threatens the efficient functioning of the market and is damaging to competition in supply and ultimately is not in the best interests of customers. Repeated changes to and deviations from due process reduces the authority and perceived legitimacy of industry codes.</p>
BGT		✗	<p>Do not support this proposal in its current form. Cannot lend unreserved support to this broad change in the Network Code. The introduction of the incentive regime for the SO activities of Transco will inevitably impact upon some elements of Transportation Charges. It is expected that the waiver will be specifically targeted to the SO NTS User charge and should be restricted to this application only.</p> <p>The extent of the impact upon the SO NTS User charge will not be fully comprehended until implementation of the proposed licence changes.</p>
Dynegy		✗	<p>This proposal is not sufficiently detailed. Transco needs to provide additional information concerning the period of notice it considers sufficient to provide to Users, the length of time the temporary waiver period shall be implemented for and finally, the Transportation Charges that are to be revised.</p>
SSE		✗	<p>The publication of Transco's GT Licence has been indefinitely delayed. Fluctuation in Transportation Charges is detrimental to the interests of customers and changes of this nature make it extremely difficult for suppliers to accurately forecast transportation costs and compete for new customers thus frustrating competition.</p> <p>This proposal is not appropriate at this time as Transco has not submitted a pricing proposal and Ofgem has not published its licence consultation.</p> <p>However, when it is evident that changes do need to be made to comply with licence obligations, there may be a need to raise a Network Code Modification Proposal to reduce the two month notice period.</p>

SGD	×	<p>Concerns remain about the process being adopted to introduce Transco's price control and associated SO incentives for April 2002. If implemented, this proposal would contribute to further uncertainty about the costs that Users will be facing in the future, undermining Users' ability to develop quotes when competing for business. This undermines competition between relevant suppliers and therefore would not facilitate Transco's Network Code obligations.</p> <p>This proposal presupposes elements of the GT Licence that have yet to be published and consulted upon by the Gas and Electricity Markets Authority. Therefore, it is difficult to see how the Authority will be able to make a judgement about how well this proposal will facilitate competition with the efficient discharge of Transco's obligations.</p>
Innogy	×	<p>The well established and codified processes should be retained whenever possible to provide certainty to the community.</p> <p>The delay in publication of the final licence amendments to implement the SO incentive scheme reflects the inherent complexity of the proposals. Therefore, adequate time needs to be given to assess the proposals themselves and consider their affect.</p> <p>The provisions of Section B1.8.2 should not be amended and the two-month notice period should not be waived. This will allow sufficient time for any changes in transportation charges to be appropriately reflected by shippers/suppliers.</p>

Transco welcomes the support offered for this proposal by some respondents.

Transco acknowledges that the requirement to provide two months notice prior to amendments being made to Transportation Charges provides Users with a degree of pricing stability. However, given the delay in publication of proposed amendments to its GT Licence, Transco believes it is desirable for this notice period to be waived to allow the timely implementation of Ofgem's proposals.

Waiver of the two month notice period will enable Transco to make any necessary amendments to its Transportation Charges as soon as possible following publication of proposed modifications to Transco's GT Licence.

A respondent was concerned that although this Modification Proposal is stated to be transitional in nature, Transco has not defined the period to which the proposed waiver would apply. The Draft Modification Report was submitted with draft legal text as required by the Modification Rules. The legal text defines the period to which the waiver would apply as being "In respect of calendar months 1 March 2002 to 30 April 2002 (inclusive)...".

Several respondents stated concern that the application of this proposal was too wide and it should instead specify the pricing amendments to which the waiver would apply. Another respondent stated that this proposal presupposes elements of Transco's GT Licence that have yet to be published and consulted upon by the Gas and Electricity Markets Authority. Transco believes that prior to the

provisions of its GT Licence conditions being agreed, Transco cannot be certain of the nature of changes to its Transportation Charges. It is for this reason that Transco has not specified the amendments that would be made using the proposed waiver.

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

Implementation is not required to facilitate compliance with safety or other legislation.

**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**

If implemented, this Modification Proposal would enable Transco to amend its Transportation Charges so they are consistent with Transco's GT Licence and NTS SO incentives. To this extent, this Modification Proposal is required to facilitate compliance with Standard Condition 4(5) of its GT Licence, i.e. adherence to "the relevant objectives".

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

There are no modifications required to Transco's systems and therefore a program of works will not be required as a result of implementing this Modification Proposal.

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

Transco proposes implementation as soon as possible.

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

Transco recommends implementation of this Modification Proposal.

**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 Gas & Electricity Markets Authority in accordance with this report.

## **19. Text**

Transition Document Part II, INTERIM TERMS

Amend paragraph 8.1.1. to read as follows:

“In respect of the calendar months 1 March 2002 to 30 April 2002 (inclusive) the requirements in Section B1.8.2. as to the giving of notice of changes to Transportation Charges shall not apply and Transco shall instead give such notice as far in advance of the date on which the proposals contained therein are to be implemented as is reasonably practicable.”



Signed for and on behalf of Transco.

Signature:

**Tim Davis**  
**Head of Regulation NT&T**

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 **0536**, version **2.0** dated **25/03/2002**) 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 **2.0**.

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 appropriate

provided 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.