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Your Ref:
Our Ref: Net/Cod/Mod/0601
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17 July 2003

Dear Colleague,

Modification proposal 0601 'Disclosure of information relating to the operation of, or any market relating to, the pipe-Line system'

Ofgem has carefully considered the issues raised in modification proposal 0601 'Disclosure of Information Relating to the Operation of, or any Market Relating to, the Pipeline System' and has decided to direct Transco to implement the modification. Ofgem believes that this modification will better facilitate the achievement of the relevant objectives of Transco's Network Code. This letter sets out the background to the modification proposal and outlines the reasons for Ofgem's decision.

Background to the proposal

In September 2002 the Authority implemented changes to Standard Conditions 4E and 9 of Transco's Gas Transporters Licence. The first of these changes has the effect of requiring Transco to comply with any obligation to disclose information relating either to the operation of the pipeline system or to any market relating to the system. The second change requires Transco to recognise Third Party Participants (TPPs) who are not network signatories, in particular by permitting them to raise Modification Proposals to all or part of the Network Code. It is intended that this will be facilitated by changes to the Transco Network Code Modification Rules, which have been consulted upon concurrent to this modification proposal.

The amended Standard Licence Conditions came about as a result of concerns raised with Ofgem from certain market participants, including customers, about the limited access they have to information in the gas market. It was felt that such parties are

placed at a competitive disadvantage to those participants with greater access to commercial and operational information, including certain real time information. In its covering letter and summary of responses, which accompanied the direction of 27 September 2002 to modify Transco's Gas Transporters Licence, Ofgem reaffirmed its belief that more information can and should be made available to interested market participants in order to facilitate market transparency and fuller demand side participation.

The modification proposal

This proposal would have the effect of introducing a new defined term of 'operational and market data', which itself will refer to a table to be inserted as an annex to Section V of the Network Code. It is intended that subsequent proposals, put forward by either Network Code signatories or TPPs would then populate the table, specifying both the nature of the information and arrangements for its release.

Respondents' views

Transco received representations from 14 parties, of which 3 gave full support and a further 3 qualified support. Typical comments of those who supported the modification were that it would lead to better data being made available to a wider audience and that competition would be enhanced.

Of those respondents against the proposal, four commented that implementation of this modification may prove restrictive, fettering Ofgem's discretion over future modification proposals. Five respondents supported the principle of data release where appropriate, but raised concerns in relation to the release of commercially sensitive information, which may have a detrimental effect on users. One respondent commented that a definition of operational and market data is unnecessary, whilst another raised concerns that the proposal puts in place a prospective mechanism without explicit recognition of the information that is expected to be released. One respondent raised a concern about the principle of parties who are not signatories to a contract having access to a process that could lead to a material change.

Transco's view

Whilst Transco raised this modification proposal in order to facilitate compliance with its Gas Transporters licence, it has also stated its support of the dissemination of operational and market data to a wider audience including consumers and other non-Network Code parties where it is anticipated that this would enhance competition. Transco adds the caveat that such data dissemination

should be subject to commercial confidentiality provisions not being breached.

Ofgem's view

The proposal represents a means by which Transco can effectively discharge its obligations in respect of Standard Condition 4e of its licence. Ofgem does not agree with those respondents who commented that implementation of this proposal would fetter the Authority's discretion. This proposal merely establishes a framework by which Network Code Users or TPPs may propose the release of additional information; it does not prescribe what that information should be. Each subsequent proposal will be considered on its individual merits and nothing in this proposal or elsewhere can fetter future decisions of the Authority.

Ofgem agrees that it would be inappropriate for information to be released that would impinge upon commercial confidentiality to the detriment of Network Code parties. In its explanatory notes on the proposed licence modifications¹ Ofgem confirmed that in making its decisions on any Network Code modifications Ofgem will have regard to any issues of commercial confidentiality. In Ofgem's view, a proposal which required Transco to breach appropriate confidentiality obligations within its Network Code or was likely to result in parties withholding information previously provided to Transco would be unlikely to fulfil the criterion of better facilitating the achievement of the relevant objectives of the Network Code.

This proposal does not in itself enable third parties to propose modifications to the Network Code. This has been progressed through amendments to Transco's Network Code Modification Rules. Ofgem has noted the concerns raised by some respondents about parties who are not signatories to a contract having access to a process that could lead to a material change. However, in Ofgem's view these concerns are not warranted. As stated above, the intent of the licence amendments is to facilitate the disclosure of information which will benefit those gas market participants who are not party to the Network Code. The amendments Transco has made to its Modification Rules, which were consulted upon and consented to by Ofgem, reflect the intent of the licence amendments and specifically limit the scope of TPP proposals to information disclosure. TPP proposals, like any other, will be consulted upon, need to demonstrate that they better facilitate the achievement of the relevant objectives of the Network Code and be subject to the consent of the Authority.

¹ Transco price control and NTS SO incentives 2002-7: Explanatory notes to accompany the section 23 notice of proposed modifications to Transco's Gas Transporter Licence – April 2002

Ofgem's decision

For the reasons outlined above, Ofgem has decided to consent to this modification, as we believe that it better facilitates the achievement of the relevant objectives as outlined under Standard Condition 9 of Transco's Gas Transporters licence, in particular the efficient discharge of its obligations under that licence.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

Jonathan Dixon
Head of Gas Network Codes