Modification Report
Amendment to Pre Termination Processes and Associated EBCC Referrals
Modification Reference Number 0686

Version 4.0

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

Transco has an obligation to manage the Energy Balancing regime on behalf of the shipping community, and as such it should not control the decisions in respect of delaying the issuing of Termination Notices for Energy Balancing charges. It is proposed that the EBCC be convened to review all such circumstances. This would be consistent with Transco acting on behalf of the EBCC in view of Transco's neutral position. Transco therefore proposes to align Sections X2.9.3, X2.10, X3.2.1 & X3.2.2 with X4.2.1 to require Transco to convene a meeting of the EBCC with the intention that the EBCC may determine whether Transco should be obliged to issue the Termination Notice, pursuant to Paragraph X4.1, or whether Transco should defer taking such a step.

It is also proposed to inform EBCC members following the issue of all 'failure' notices which would be referenced in Sections X2.9, X2.10, X3.2 & X4.

It is intended that the introduction of the proposal to inform the EBCC when any failure notice is issued and to convene a meeting of the EBCC before issuing a Termination Notice, should not delay the issue of such notices. However, should any delay result, Transco should not be held responsible. Informing EBCC members when a failure notice is issued serves to provide prior warning that a Termination Notice is due to be issued.

2. Transco's Opinion

It is Transco's opinion that this Modification Proposal should be implemented. Transco believes that there are benefits to be gained in making the Termination Process more transparent and therefore easier to manage.

Following a recent User failure resulting in the appointment of an Administrator, Transco raised concerns with the EBCC regarding requirements within the Network Code which are incumbent upon Transco. These relate to a requirement for a meeting of the EBCC to be convened prior to issuing a Termination Notice only in certain circumstances.

Currently there is no requirement for Transco to refer to the EBCC when it issues a Termination Notice for the following reasons:

X2.9 "Failure to Pay Cash Call"

X2.10 "Further Security Request"

X3.2 "Failure to make payment"

Transco is required to refer to the EBCC under X4.2.1 "Appointment of a Receiver", which states that upon the Appointment of a Receiver, Transco shall convene a meeting of the EBCC as soon as reasonably practicable to determine whether Transco should be obliged to issue a Termination Notice or to defer taking such a step.

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

Fully inclusive and transparent procedures for dealing with User Termination would better facilitate Transco's GT Licence "code relevant objective" of the securing of effective competition between relevant shippers and between relevant suppliers, since it would serve to reduce the level of risk experienced by the remainder of the shipping community.

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 implications for the operation of the System.

b) development and capital cost and operating cost implications:

Transco is not aware of any development or capital costs arising from the implementation of this Modification Proposal.

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:

Implementation would not cause Transco to incur any additional costs.

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

Transco is unaware of any such consequence.

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 does not believe that implementing this Modification Proposal would have any consequence on the level of contractual risk to Transco under the Network Code.

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 for its computer systems or those of Users.

7. The implications of implementing the Modification Proposal for Users

Transco is not aware of any implications for Users which may be caused by implementation of this Modification Proposal.

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

No such implications have been identified.

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

No such implications have been identified.

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

Advantages:

- Advance notification to EBCC Members that a Termination Notice is due to be issued.
- Creation of a more transparent Termination Process which is consistent with Transco acting on behalf of the EBCC in view of its neutral position.

Disadvantages:

- Transco is not aware of any disadvantages associated with this Modification Proposal.

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

Four representations have been received for this Modification Proposal all of which are supportive.

Scottish and Southern Energy plc supports the Proposal and agrees that "*there are benefits in making the Termination Process more transparent and easier to manage.*" It also agrees that the EBCC should be convened to discuss Termination Notices and that Transco should inform the EBCC when it has issued other 'failure' notices. EDF Energy Plc believes that the Proposal "*will serve to provide prior warning that a Termination Notice is due to be issued.*" It also believes that "*this will better facilitate achievement of the applicable Network Code objectives by allowing Transco to share the responsibility of termination of a shipper in a transparent process with the EBCC.*"

British Gas Trading believes that implementation of this Proposal would enhance Transco's requirement to keep the community informed by means of liaison with the EBCC by

providing greater transparency to the termination process. It believes that this improves the ability of other Users to assess their exposure.

Powergen is in favour of the Proposal and recognises that any concerns about it delaying the issue of the Termination Notice are "*minor and improbable*" and it believes that "*the proposal promotes transparency and includes the wider industry in decision making.*" Transco agrees with the respondent that it is unlikely that introduction of this Proposal would delay the issue of a Termination Notice. Powergen states that any concerns it may have had with this Proposal have been satisfied by the implementation of Modification Proposal 0668: Energy Balancing Credit Committee Members Personal Liability.

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 not required to facilitate such compliance.

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 ModificationProposal

The programme of works required to implement this Modification Proposal includes changes to the Energy Balancing Credit Rules which requires approval by EBCC members and is subject to a 2 month minimum notice period unless agreed otherwise.

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

This Modification Proposal can be implemented with immediate effect following determination by Ofgem subject to the completion of the work as detailed above.

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

SECTION X: NETWORK CODE SUPPLEMENT

Amend paragraph 2.9.3 to read as follows:

"2.9.3 . . . . as soon as reasonably practicable after such notice Transco shall be entitled to, and as soon as reasonably practicable after such 3rd Business Day, subject to paragraph 2.9.7 may, give Termination Notice…"

Amend paragraph 2.9.4 to read as follows:

"2.9.4 Transco will send a copy of any notice given under paragraph 2.9.1 or 2.9.3 to the Authority and without prejudice to paragraph 1.2.5, shall notify the Energy Balancing Credit Committee that such notice has been issued."

Add new paragraph 2.9.7 to read as follows:

"2.9.7 Before Transco shall take the action envisaged by paragraph 2.9.3, Transco shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable on or after the 3rd Business Day following the date of the notice given to the User pursuant to paragraph 2.9.1 and shall consult with the Energy Balancing Credit Committee to determine whether Transco should be obliged to issue the Termination Notice, pursuant to paragraph 2.9.3, or whether Transco should defer taking such step."

Amend paragraph 2.10.9 to read as follows:

"2.10.9 Where a User has not provided the further . . . . set out in the Energy Balancing Credit Rules. Without prejudice to paragraph 1.2.5, Transco shall notify the Energy Balancing Credit Committee that such a notice has been issued."

Amend paragraph 2.10.10 to read as follows:

"2.10.10 Subject to paragraph 2.10.12, where the User has not provided the further . . . ."

Add a new paragraph 2.10.12 as follows:

"2.10.12 Before Transco shall take the action envisaged by paragraph 2.10.10, Transco shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable on or after the 7th Business Day following the date the Failure to Supply Further Security Notice was submitted and shall consult with the Energy Balancing Credit Committee to determine whether Transco should be obliged to issue the Termination Notice, pursuant to paragraph 2.10.10, or whether Transco should defer taking such step."

Amend paragraph 3.2.2 to read as follows:

"3.2.2 Where Transco has given . . . . Transco shall be entitled to and, subject to paragraph 3.2.5, as soon as reasonably practicable after such 5th Business Day may, give Termination Notice (for the purposes of Section V4.3.3) to the User. . . ."

Amend paragraph 3.2.3 as follows:

"3.2.3 Transco will send a copy of any notice given under paragraph 3.2.1 or 3.2.2 to the Authority and without prejudice to paragraph 1.2.5, will notify the Energy Balancing Credit Committee that such a notice has been issued.

Add new paragraph 3.2.5 as follows:

"3.2.5 Before Transco shall take the action envisaged by paragraph 3.2.2, Transco shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable on or after the 5th Business Day following the date of the notice given to the User pursuant to paragraph 3.2.1 and shall consult with the Energy Balancing Credit Committee to determine whether Transco should be obliged to issue the Termination Notice pursuant to paragraph 3.2.2, or whether Transco should defer taking such step."

Signed for and on behalf of Transco.

Signature:

Steve Coomber
Finance Manager
Support Services

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 **0686**, version **4.0** dated **16/08/2004**) 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 **4.0**.

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.