

Modification Report
Failure to Pay Cash Call Notice (reduced timescales)
Modification Reference Number 0737
Version 1.0

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

This Proposal aims to reduce the lapse time period between issuing a failure to pay Cash Call notice and convening an emergency Energy Balancing Credit Committee (EBCC) meeting, to determine whether or not to issue a Termination Notice, from three Business Days to one.

With regard to Cash Calls, payment of Cash Call notices, failure to pay notices and Termination Notices the Network Code currently sets out the following timescales. Where Transco submits a Cash Call notice and the User does not successfully appeal such notice the User is obliged to make payment in full of the Cash Call amount on the Business day following the Day on which the Cash Call was made. Where payment is not made Network Code Supplement Su 2.9.1 states that "Transco shall be entitled to, and as soon as reasonably practicable after Business Day will, submit to the User a notice substantially in the form set out in the Energy Balancing Credit Rules (EBCR), notifying the User that Transco will give Termination Notice to the User if the User does not pay the amount of the Cash Call in full by the 3rd Business Day after the date of such notice".

Following discussion about defaulting debtors at the EBCC it has been decided that three business days is an excessive period for the expiration of the notice described in Su 2.9.1 (failure to pay Cash Call notice) and that it would be more appropriate to allow only one business day for compliance, prior to convening an operational meeting of the EBCC to determine whether or not to issue a Termination Notice. It is also proposed that the wording in section Su 2.9.1 should be amended to reflect that Transco will refer to the EBCC prior to issuing a Termination Notice in line with X2.9.7 (introduced by Modification 0686: Amendment to Pre Termination Processes and Associated EBCC Referrals).

2. Transco's Opinion

It is Transco's opinion that this Modification Proposal should be implemented.

The Proposal aims to reduce the lapse time period between issuing a failure to pay Cash Call notice and convening an emergency EBCC meeting to determine whether or not to issue a Termination Notice, from three Business Days to one.

Transco's view is that if this Modification Proposal were not implemented, the current level of risk posed by defaulting debtors would remain. In Transco's opinion the Proposal serves to protect the shipping community against potential losses in the event of a User default.

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

Following a review by Transco of the Section X of the Network Code and the EBCR, it was identified that by revising the rules governing the management of the Cash Call process, the level of risk faced by Users could be reduced. Such a revision would further the objectives of the EBCR, namely to “develop and maintain a Framework for limiting the risk of financial loss to the shipper community resulting from the operation of the Energy Balancing regime”. The principles have been discussed within the EBCC, and in accordance with its recommendation, Transco raised this Modification Proposal.

The measures contained within this Modification Proposal meet Transco's GT Licence 'code relevant objective' of facilitating the efficient and economic operation of its pipe-line system.

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

a) implications for the operation of the System:

No such implications have been identified.

b) development and capital cost and operating cost implications:

No such costs would be incurred by Transco.

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:

Transco does not propose any additional cost recovery.

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

No such consequences have been identified.

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

The level of Transco's contractual risk is not impacted by implementation of this Modification Proposal.

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

No such implications have been identified.

7. The implications of implementing the Modification Proposal for Users

Provides Users with additional protection against potential losses in the event of a User default.

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 consequences have been identified.

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

Advantages:

- Reduces the financial risk posed by defaulting debtors thereby protecting the shipping community against potential losses in the event of a User default.
- Facilitates a specific recommendation of the Energy Balancing Credit Committee.

Disadvantages:

- No disadvantages have been identified.

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

Seven representations were received with respect to this Modification Proposal. Six respondents were supportive of its implementation and one respondent was supportive of the Proposal in principle.

Four respondents provide comment with regard to the reduction in the timescale. Centrica Storage Ltd (CSL) identifies that *"we do recognise that providing for only 1 business day following the convening of the Energy Balancing Credit Committee ("EBCC") may cause some practical problems in terms of raising payment, but by this stage sufficient opportunity has been provided to pay/dispute these invoices"*. Statoil UK expresses a view that it is *"unclear of the reason why the period is currently set at three days, which we believe to be an excessive period for the expiration of the notice"*. British Gas comments that *"We support the view that 3 days is excessive. If a failing User is genuinely unable to respond to the cash call and settle the outstanding sums, then it is in the interest of all parties that necessary actions are initiated without delay"*. Transco agrees with the view of the above respondents that the 3 day period is excessive. The original timescale was established at the

implementation of Network Code but Transco is unaware of the original criteria used in determining this timescale.

Six respondents refer to the reduction in the level of risk facing the shipping community in the event of User default. Statoil UK *"welcomes the recommendations made by the EBCC to change this period to one business day as this reduces the level of risk that could be faced by shippers"*, a view supported by Total Gas & Power Limited which states that the Proposal *"gives further protection to the shipping community against potential losses in the event of a User default"*. Centrica Storage Ltd (CSL) highlights that although it *"believes every opportunity should be given for a shipper to continue operating, we consider that competition between shippers would be distorted by allowing a shipper in default of paying a cash call notice to continue to generate costs that the community in aggregate would then have to pay"*. Transco concurs with the views of the above respondents.

British Gas notes that *"the proposed legal text inserts the word "may" in paragraph X2.9.1 rather than "will". Although this appears to dilute the obligation upon Transco to take action following a failure to respond to a cash call notice, we believe that this is a pragmatic step which would avoid measures being taken unnecessarily in the event of some difficulty in convening a meeting of the EBCC"*. EDF Energy Plc comments *"we also welcome the change in the wording of 2.9.1 from 'will' to 'may' as it demonstrates that the EBCC will take proper account of the circumstances before issuing a Termination Notice"*. Transco agrees with the opinions stated by the above respondents.

RWE Npower Plc advises that it has *"concerns that reducing the timescale for paying a failure to pay notice from three business days to one may restrict a Users ability to pay cash calls via the BACS payment route (which is a three business day payment facility)"*. RWE believes that *"It may be more appropriate therefore to reduce the timescale for paying a cash call notice following a failure to pay notice from three business days to two. This should ensure that if the payment does have to be made via BACS, sufficient time is available for the payment to be received prior to the EBCC being convened to consider whether to issue a Termination Notice"*.

Transco's response is that it believes that the current 3 days presents an unnecessary risk to the community allowing a failing user to incur an avoidable 2 days exposure. Transco believes that this Modification Proposal would allow sufficient time for a BACS payment to be made as follows:

- Day 1 Issue Cash Call notice before 3:00 pm.
- Day 2 Notice either appealed before 12:00 noon or paid by close of business (note: this does not allow 3 days for BACS payments).
- Day 3 Assuming no appeal received and no payment made, 'Failure to Pay' notice issued.
- Day 4 'Failure to Pay' notice matures (from day 1 through to day 4) and accommodates BACS payments - timed from original notification).

Note: All Users have the ability (at marginally higher cost) to pay via same-day payment (CHAPs) providing they process such prior to 3:00 pm on that day.

Total Gas & Power comments that *"we agree with the view that such a revision to the Code furthers the objectives of the EBCR and, as members of the EBCC, are fully in accordance with the recommendation of the Committee"*. Transco acknowledges this view.

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 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 Modification Proposal is not required to facilitate any such change.

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

No program of works are required.

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

This Modification Proposal may be implemented with immediate effect.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this Modification Proposal be implemented.

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: ENERGY BALANCING CREDIT MANAGEMENT

Amend paragraph 2.9.1 to read as follows:

"Where a User ... that Transco may give Termination Notice to the User if the User does not pay the amount of Cash Call in full by the Business Day following the date of such notice".

Amend paragraph 2.9.3 to read as follows:

"Where Transco ... in the notice in full after one Business Day following ... Transco shall be entitled to and after such Business Day subject to paragraph 2.9.7 may give Termination Notice..."

Amend paragraph 2.9.7 to read as follows:

"Before Transco shall ... as soon as reasonably practicable on or after one Business Day following the date ..."

Signed for and on behalf of Transco.

Signature:

Declan McLaughlin
Commercial Manager, Customer Services

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 **0737**, version **1.0** dated **21/02/2005**) 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 **1.0**.

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 appropriateprovided 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.