



Shippers, Transco and other interested parties

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13 December 2004

Dear Colleague,

**Network Code Modification Proposal 709 – Improving the Accountability and Management of Network Code Meetings**

Ofgem has carefully considered the issues raised in this proposal and has decided to direct Transco to implement the modification as it better facilitates the achievement of the relevant objectives of Transco's network code, as set under standard condition 9 of Transco's Gas Transporter (GT) licence.

**Background to the proposal**

The GT licence requires Transco to establish transportation arrangements consistent with its duties under section 9 of the Gas Act 1986 and to facilitate the achievement of the relevant objectives. The document specifying transportation arrangements is referred to as the Network Code. The GT licence also obliges Transco to prepare a document outlining the modification procedures for the Network Code. Until recently the modification rules were a separate document and therefore not subject to the governance arrangements for which they provided. The implementation of modification proposal 679 brought about the inclusion of the modification rules under the auspices of the Network Code (Section Y). As such, any signatory to the Network Code can propose an amendment to the modification rules.

Since the implementation of modification proposal 679, a number of modification proposals have been raised in relation to modification rules including modification proposal 709. These proposals largely result from the work undertaken by a Gas Forum working group.

**The proposal**

This proposal involves amendments to section Y such that the conduct of the Panel and Network Code Committee meetings are brought formally under the Chairman's Guidelines. Currently, Panel and Network Code Committee meetings are conducted in a manner consistent with the Chairman's Guidelines although on an informal basis. The proposal involves new provisions for amending the guidelines, minutes of meetings and new items of business as well as two definitional changes.

## **Respondents' views**

In total, Transco received 11 responses to its consultation on modification proposal 709, including one which was apparently sent to Transco within the defined period, but not received and therefore not included within the Final Modification Report. All responses were in favour of the proposal being implemented. Whilst respondents generally agreed that the existing procedures have worked well, they considered that the adoption of the Chairmen's Guidelines will further improve the transparency and accountability within the process.

Several respondents considered that adoption of, and adherence to, the improved Guidelines, particularly the management of meetings and agreeing minutes, would allow attendees to better prepare for subsequent meetings and give those not attending greater confidence in the accuracy and detail of recorded discussions and decisions. Two respondents stated that the proposal may mitigate suggestions that one party (Transco) exerts undue influence over the process.

Whilst supporting the proposal, two respondents considered that the current level of flexibility was beneficial and should not be lost. Several respondents stated that they did not believe that the proposal would impinge upon flexibility in any way. Respondents also pointed out that the Modification Panel would have the vires to modify the Guidelines, while another noted that any of the modification rules themselves could be dis-applied if necessary.

Whilst recognising that this proposal must be considered on its merits, in its Draft Modification Report Transco noted that industry consultation is underway on the development of governance arrangements for the Unified Network Code (UNC), and suggested that consideration should be given to how implementation of this Proposal would interact with such developments. In response to this several respondents expressed their view that this proposal must be considered solely in context of the existing Network Code. However, many went on to state that improvements to governance as represented by this proposal should be carried over and built upon by the UNC.

## **Transco's views**

Transco did not recommend the implementation of this modification proposal. Transco is of the view that the current governance arrangements for the Network Code operate well. Transco believes that the benefit of additional accountability as a result of incorporating the Chairman's Guidelines into the Network Code needs to be balanced against any loss of flexibility in the present arrangements which can assist modification proposals. Transco recognises that discussion on this proposal will also be useful in informing discussion on the UNC governance development and considers that consistency of governance would assist an orderly transition.

## **Revised Final Modification Report**

As Transco did not recommend implementation of this proposal it did not provide accompanying legal text with the Final Modification Report, though it was later provided at Ofgem's request. At the time of the November Modification Panel meeting it was unclear to Ofgem whether the legal text fully reflected the intent of the proposal, a point which was explained to the panel. The panel subsequently agreed that Transco should circulate a notice inviting further representations on the legal text it had prepared.

Transco received a further three representations to its notice, all of which continued to support implementation of the proposal and offered comments on the proposed legal text. All three respondents commented upon the reporting of determinations, with the original proposer confirming that its intention was for the Secretary to set out all determinations made at the Modification Panel, not only those which were unanimous, as inferred by the proposed text. The proposer also suggested that the reference to the Chairman's Guidelines should be included within the definition of *Workstream*. Two respondents suggested that the definition of Chairman's Guidelines should include reference to Development Workgroups and Review Groups. Transco had no objections to these drafting suggestions and has amended the proposed legal text accordingly.

### **Ofgem's views**

Transco operates procedures enabling the modification of its Network Code, in accordance with Standard Condition 9 of its GT licence. Ofgem supports the principles of greater transparency and accountability within that modification process. Formalising the Chairman's Guidelines under the Network Code provides for greater ownership of the process by the Modification Panel and thereby improved accountability. This proposal also addresses any concerns amongst shippers regarding Transco's secretariat role in the modification process; for example, it will ensure that there can be no question as to whether the views of parties are accurately reflected in the minutes. This in turn will promote openness and accountability, which will contribute to the development of robust proposals that better facilitate the relevant objectives, such as securing effective competition between relevant shippers and relevant suppliers.

Ofgem notes the concerns of Transco and some respondents regarding flexibility, and agrees that this feature of the Network Code procedures should not be lost. However, Ofgem expects that the formal adoption of the Chairman's Guidelines will have little impact upon the level of flexibility, as they are generally already being adhered to, albeit on an informal basis. Ofgem also agrees with the respondent who pointed out that if appropriate, rules could be dis-applied by Panel agreement. Ultimately, the appropriate balance between flexibility and accountability may depend upon the continuing pragmatic approach of Network Code parties, and in particular Panel members.

Having considered responses to the revised modification report and with regard to Section V10 of the Network Code, which refers to certain provisions of the modification rules (contained within Section Y) applying *mutatis mutandis* to the Network Code Committee, Ofgem is now satisfied that no amendments are required to Section V in order to fulfil the intent of this proposal.

Whilst modification proposals are assessed by Ofgem on their own merits, Ofgem is cognisant of the ongoing consultation on the development of a UNC to facilitate Transco's sale of gas distribution networks. Ofgem is of the view that the adoption of Chairman's Guidelines will provide for good meeting practice and therefore improved governance of the existing Network Code. It is reasonable to expect that arrangements which provide for good governance will be adopted by the UNC.

## Ofgem's decision

For the reasons outlined above, Ofgem has decided to direct Transco to implement this modification proposal. Ofgem considers that formal adoption of the Chairman's Guidelines would represent an improvement to Network Code governance, which would better facilitate the achievement of the relevant objectives of the Transco Network Code as outlined under Standard Condition 9 of its GT licence, in particular the efficient discharge of obligations under that licence. Improved governance can also be expected to further the relevant objectives of; efficient and economic operation by the licensee of its pipeline system, and; the securing of effective competition between relevant shippers and between relevant suppliers.

Ofgem notes that in order for the implementation of this modification to be effected, the revised Guidelines will need to be agreed by the Modification Panel. Given the level of support for the revised Guidelines and their straightforward nature, Ofgem hopes that this can be achieved at the earliest opportunity.

If you have any further questions regarding this letter please do not hesitate to contact me on the above number or Leigh Henderson on 020 7901 7474.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson  
**Director, Modifications**