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02 February 2005

Dear Colleague,

**Network Code Modification Proposal 712: 'Additional information in Modification Proposal and Modification Reports'.**

Ofgem<sup>1</sup> has carefully considered the issues arising from this proposal and having regard to the relevant objectives of Transco's Network Code, as set under standard condition 9 of Transco's Gas Transporter (GT) licence and Ofgem's own statutory duties<sup>2</sup>, has decided to direct Transco to implement the modification. This letter gives reasons for this decision.

**Background to the proposal**

Standard condition 9 of Transco's GT licence requires it to establish transportation arrangements consistent with its duties under section 9 of the Gas Act 1986 and to facilitate the achievement of certain relevant objectives, as prescribed in that licence condition. The document specifying such 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 they provided. The implementation of modification proposal 679 brought about the inclusion of the modification rules in Transco's Network Code (Section Y). As such, any signatory to the Network Code can propose an amendment to the modification rules.

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<sup>1</sup> Ofgem is the Office of the Gas and Electricity Markets Authority. In this letter the terms Ofgem and the Authority are used interchangeably

<sup>2</sup> Ofgem's statutory duties are wider than consideration of the Network Code relevant objectives and include, amongst other things, a duty give regard to best regulatory practice and the social and environmental guidance provided to Ofgem by the government.

The Network Code modification rules set out, amongst other things, the content required in each modification proposal and the subsequent Draft Modification Report (DMR) and Final Modification Report (FMR).

## **The proposal**

This proposal involves amendments to the Network Code modification rules, as contained in section Y of the Network Code, in order to require five additional items of information to be provided within a modification proposal.

It is proposed that two of these additional items should be mandatory:-

- the proponent's justification for a proposal to be dealt with as urgent, and
- the proponent's suggested method of progressing the proposal through the modification rules, for instance, whether they wish the proposal to go straight to consultation or to a workstream for further development.

It is also proposed that three items of information may be added at the proponent's discretion:-

- the proponent's opinion of the impact of the proposal on Users' IT and/or manual systems
- any views the proponent may have on implementation timescales, and
- the proponent's suggested legal text.

Transco would also be required to include the modification proposal in full in its Modification Report and to outline its initial assessment of how UK Link may be impacted by the proposal.

Ofgem understands that this modification proposal, along with 713, 714 and 715 has been subject to discussions both at the Governance Workstream and under the auspices of the Gas Forum.

## **Respondents' views**

Transco received twelve responses to its consultation on this modification proposal. Of these, eleven were in favour, with the twelfth offering supportive comments.

Respondents generally felt that whilst the current Network Code modification procedures have worked well, this modification proposal, along with proposals 713, 714 and 715 to which most respondents provided joint responses, would further improve them.

In response to Transco's request for clarity on the level of impact assessment required by the proposal, several respondents referred back to the drafting within the proposal and their understanding of the proponent's intent, that the IS impact assessment at the DMR stage would only be an initial high level assessment. It was noted by some respondents that such assessments are already part of the process, particularly in forming Transco's

opinion of a modification proposal, and should therefore not represent any significant additional costs. Several respondents stated that the provision of an impact assessment would not require an extension to the 15 business days currently allowed for the production of a DMR.

Several respondents supported Transco's suggestion that a disclaimer should be included within the legal text in order to recognise that any high level IS impact assessment carried out in the early stages of development would be subject to change following a further detailed analysis.

### **Transco's views**

Whilst Transco states its support for the intent of the proposal, insofar as providing greater clarity in respect of governance of the Network Code, Transco does not recommend that it should be implemented.

Transco's concerns with the modification proposal were predominantly in respect of the detail and associated costs of any Information System (IS) assessment. Transco stated that it was unclear, despite responses received, as to what would be required of it and noted that it already provides a high level IS impact assessment as required by Section 8.9.3(e) of the Network Code.

Transco also notes that the current process provides for it to prepare legal text for all modification proposals in respect of which implementation is being recommended. Transco considers that it is in the interests of all parties that drafting be of an appropriate standard and accuracy and that for two parties to develop legal text would be a duplication of effort and therefore an inefficient use of resources.

### **Ofgem's views**

Ofgem supports the principles of greater transparency and accountability within the modification process, and this extends as much to those who raise proposals as to Transco in administering them. Whilst Ofgem notes that this was one of a suite of modification proposals, Ofgem has considered each on its own merits.

Ofgem notes that of the five additional items suggested as being included in the proposal, only (where applicable) the proponent's rationale for the proposal being dealt with as an urgent modification and/or preferred means of progression are proposed to be mandatory, with the other three items being optional. Whilst these proposed mandatory items are generally included within a proposal already, there is not a specific requirement to do. Indeed, it is sometimes the case that the proponent provides justification for the modification itself, rather than justification for it being treated as urgent. Therefore, whilst proponents are already able to include the required information, a specific prompt to do so may provide greater clarity both in terms of what is required of proponents and subsequently, their views on the modification proposal.

To the extent that three of the five suggested items are optional, Ofgem does not consider it will place a significant or inappropriate burden upon those wishing to put forward proposals.

Generally, Transco currently provides legal text as part of the FMR for those modification proposals in respect of which Transco recommends implementation. In other instances Transco will produce legal text at the request of Ofgem. Although this may have certain benefits in relation to the efficient use of Transco's legal resources, it means that modifications which Transco does not support can be subject to a further delay. Although this proposal does not address this point specifically, Ofgem considers that provision of suggested legal text by the proponent can assist Transco and others in understanding the precise intent of the proposal. In any case, Ofgem would not expect the provision of legal text to take longer than the 15 business days that would ordinarily be allowed for the production of a FMR, though there is currently no means of ensuring this.

Ofgem has noted Transco's comments that legal text may be better done by specialists with the appropriate background knowledge and experience, and that the provision of detailed business rules as part of the proposal can be more helpful than draft legal text. However, it is already the case that the proponent may provide draft legal text if they wish, and this in no way hinders Transco's role in providing the legal text upon which Ofgem may make a direction, as has been the case with this proposal.

Ofgem does not consider that the intent of this proposal was to require Transco to conduct a detailed impact assessment of Information System (IS) implications at the DMR stage. Ofgem has noted the statement made by the proponent in the modification proposal itself, which refers to an outline of Transco's initial view and acknowledges that this will be subject to later confirmation. Several respondents also indicated that the assessment at the DMR stage should be indicative. As stated by Transco, it already provides a high level IS impact assessment as part of the DMR. Although it may have been helpful if the proponent had given a more clear indication, either within the proposal itself or subsequent response, of what was specifically sought in addition to that ordinarily provided, the suggested legal text does refer to identification of which parts of the UK Link systems are likely to be affected. To the extent any further specification is required, the Modification Panel can and often do request that specific information be provided within the DMR. Ofgem considers this to be a useful function of the Modification Panel, allowing a reasonable degree of flexibility in terms of what information is requested and subsequently provided.

Transco suggested within the DMR that the legal text contain a disclaimer recognising that any IS impact assessment carried out at an early stage would be subject to later change. Ofgem considers that to the extent any further clarity is required on the status of any initial impact assessment, such a disclaimer would have been reasonable. Indeed this was acknowledged in the proposal itself, which noted that the intent was not for Transco to produce a full systems impact and that any initial view would necessarily be

subject to later confirmation. However, in its legal text, Transco has not sought to introduce a disclaimer as such, but does make reference to the assessment being based upon information available to it at the relevant time. Ofgem considers this achieves the same purpose as a specific temporal disclaimer.

Although nothing in the modification rules currently precludes the provision of additional information as prescribed in this proposal, making two of the items mandatory will ensure their provision, whereas prompting the proponent to consider the items they may additionally provide, at their discretion, can be expected to encourage their inclusion more often than is currently the case. Ofgem therefore considers that this modification may go some way towards a better informed and more transparent modifications procedure.

### **Ofgem's decision**

For the reasons outlined above, Ofgem has decided to direct Transco to implement this modification as Ofgem considers that it would better facilitate the achievement of the relevant objectives of the Transco Network Code, as outlined under standard licence condition 9 of its GT licence. In particular, given that Transco is required by licence<sup>3</sup> to operate procedures for the modification of its Network Code, implementation of this proposal can be expected to facilitate the efficient discharge of Transco's obligations under its licence.

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

Nick Simpson

**Director, Modifications**

Signed on behalf of the Authority and authorised for that purpose by the Authority

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<sup>3</sup> Standard licence condition 9 (4)