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Shippers, Transco and Other Interested Parties

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17 December 2003

Dear Colleague,

### **Modification proposal 0668 'Energy Balancing Credit Committee Members Personal Liability'**

Ofgem has carefully considered the issues raised in modification proposal 0668 'Energy Balancing Credit Committee Members Personal Liability'. Ofgem has decided to direct Transco to implement the modification, as we believe that it will better facilitate the achievement of the relevant objectives of Transco's network code.

In this letter we explain the background to the modification proposal and outline the reasons for making our decision.

#### **Background to the proposal**

The network code supplement (section X) vests the Credit Risk Manager – Energy (CRM-E) and the Energy Balancing Credit Committee (EBCC) with a number of powers, duties and rights in order to manage the shipper community's energy balancing credit risk. As Transco is financially 'neutral' to energy balancing activity, the shipper community has appointed it to act as the CRM-E on its behalf.

The EBCC is chaired by Transco CRM-E and attended by shipper representatives (who are elected to represent the community's interests for a period of 12 months) and an Ofgem representative. Meetings occur regularly, to review relevant statistics, energy balancing related modification proposals and to discuss issues relating to specific companies, for example, default and termination events (without disclosure of the user's identity, unless this would be impractical). Additionally, the EBCC may authorise Transco CRM-E to implement, delay or modify the implementation of section X provisions. Decisions, on all issues are taken by affirmative vote of simple majority of the shipper representatives at a quorate meeting.

When directing Transco CRM-E's actions, EBCC shipper representatives are not currently protected from possible liability claims made against them personally, in respect of decisions made on behalf of the shipper community. In contrast section X.1.3 provides protection for Transco against liability arising from the application of section X (subject to the limitations of X.1.3.8). Arrangements under the Balancing and Settlement Code (BSC) also provide protection for members of comparable sub-committees in the electricity market.

In the absence of protection against actions being brought against them personally by shippers, it may prove difficult to attract or retain representatives of the shipper community to serve on the EBCC, or for them to make decisions on the community's behalf. This could reduce (or remove), the level of control of the EBCC, and thereby the shipper community, on energy balancing credit risk management.

### **The modification proposal**

It is proposed that a provision be included in network code section X.1.2 (EBCC) to protect EBCC members from personal legal action by shippers, in respect of decisions made in their capacity as committee members on behalf of the shipper community.

The modification proposal would align the gas industry with the electricity Balancing and Settlement Code (BSC) which currently provides protection for members of comparable sub-committees.

The EBCC requested that Transco raise this modification proposal on its behalf to seek protection for its members. Transco considers that the proposal ensures that the existing governance arrangements for the energy balancing regime are maintained, which better facilitate the relevant objectives through the efficient and economic operation of the pipeline system.

### **Respondents' views**

Transco received representations from seven shippers, all of which were supportive of the modification. A common theme among the representations was a support for the role and function of the EBCC, and the need to ensure that its effectiveness is not diminished by individuals being reluctant to sit on the committee, or make appropriate decisions as and when required.

### **Transco's view**

Transco's opinion is that the modification proposal should be implemented. It states that as EBCC members do not currently have any protection from possible liability claims made against them personally in respect of decisions that they make as EBCC members on behalf of the shipper community, existing/future members may be reluctant to make decisions. This could frustrate the effective functioning of the EBCC and could impact on the future governance of the energy balancing regime as a whole.

### **Ofgem's view**

Ofgem are supportive of the role played by the EBCC in managing the financial risks to the community associated with the potential default of one or more shippers, as outlined above. To

that end, EBCC members are acting on behalf of the shipper community as a whole, rather than representing the interests of their company. EBCC decisions are subject to quorate vote, with no single member being responsible for decision made.

Given the role and constitution of the EBCC, Ofgem does not consider that it would be appropriate for individual members acting properly and in good faith to be potentially exposed to individual liabilities resulting from the actions of the EBCC. Ofgem notes however, that EBCC members would not be exempt from liabilities were they to act fraudulently, or otherwise in bad faith.

Ofgem considers that effective energy balancing is fundamental to the efficient and economic operation of the pipe-line. Moreover, appropriate energy credit management contributes to a secure and stable business environment, which facilitates effective competition in gas shipping and supply.

### **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 Amended Standard Condition 9 of Transco's GT 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,

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

Nick Simpson  
**Director of Industry Code Development**