

Modification Report
Top-up Monitor Cost Recovery
Modification Reference Number 0583
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

The original Proposal was as follows:

"It is proposed that where the Top-Up Manager identifies a Winter Top-Up Injection Requirement, due to the amount of gas-in-storage falling below the "monitor" level, it would notify this to all Users. Following such notification, if a User were to make any subsequent Storage Withdrawal Nomination, the net costs of any counter storage injection made by the Top-Up Manager in compliance with the Network Code and Safety Case would be recovered from that User. This notification would be withdrawn if the monitor level subsequently fell below the amount of gas-in-storage.

The costs expected to be incurred by the Top-Up Manager to be recovered from the User would be:

- Cost of gas purchased on the day for injection into the Storage Facility(ies) concerned;
- Costs of all services procured by the Top-Up Manager in order to make the injection and to store the gas; and
- Any additional costs in withdrawing that gas from the Storage Facility(ies) under Network Code disposal arrangements.

It is suggested that all income, after allowing for financing costs, from the subsequent disposal of that gas would be offset against the costs summarised above."

Following representations, it is now proposed that the net costs resulting from counter-injections by the Top-up Manager be recovered from Users on the basis of their firm demand on the Gas Day.

2. Transco's Opinion

Transco's Safety Case, which includes Top-up as part of the safety regime, refers to provisions within both the Gas Supplier and the Gas Transporter Licence in respect of supply security:

- In the Gas Supplier Licence there is a requirement for the relevant supplier to either meet "domestic supply security standards" in relation to their domestic customers, or secure that gas conveyed by gas transporters for supply to domestic customers is conveyed in conformity with those transporters' network codes. The definition of supply security standards is contained within paragraph 4 of Standard Condition 32A in the Supplier Licence.

- In the Gas Transporter Licence, Standard Condition 9 (1) (d) requires the transporter to establish a network code calculated (inter alia) to provide "reasonable economic incentives for relevant suppliers to secure that the domestic supply security standards" are satisfied, as respects the availability of gas to their domestic customers.

At present the Network Code incentives operate as follows:

- Users with insufficient availability of beach gas, or gas-in-storage, or pre-contracted NBP gas, would be expected to have energy imbalance deficits for that Gas Day;
- Such Users would only be able to address this deficit by on-the-day purchase of gas which would be likely to be set at a high price by the operation of within day markets, including the OCM;
- Within day market prices would in turn be influenced by accepted Top-up Market Offers which are set by a formula within the Network Code designed to result in a relatively high price for that gas;
- If Users with projected energy imbalance deficits declined to participate in within day markets on that Gas Day the resultant imbalance would be cashed-out at the SMP_{buy} price for that Gas Day, which would be at least as high as the Top-Up Market Offer price; and
- On the other hand, Users that have made sufficient provision of beach gas and gas-in-storage would not be expected to have energy imbalance deficits and would not be adversely affected by high SMP_{buy} prices.

Whilst these incentives should encourage Shippers not to be short on days of high demand, Users would also be expected to consider the likelihood of such a deficit occurring. Transco believes that as the likelihood would be associated with a very severe winter, which by its nature is infrequent, the present incentive structure is in need of strengthening.

The Modification Proposal seeks to strengthen the incentive on Users to put necessary measures in place to maintain their supply/demand balance throughout a severe winter period. Implementation of the Modification Proposal would apply a charge to Users if their storage withdrawals, in the absence of a counter nomination by the Top-up Manager, would lead to a breach in monitor levels. Users would have a strengthened incentive to retain quantities of gas-in-store to balance any incentives they might have to withdraw that gas.

Transco believes that most storage withdrawals would not be affected by the implementation of the Modification Proposal and Users would have a clear indication beforehand of which withdrawals would be likely to incur the proposed charge.

Transco acknowledges that introducing an incentive on User not to withdraw gas-in-storage might lead to those Users using demand-side flexibility, including interruption at power stations. However, a counter nomination by Transco would be expected to have the same effect as it should produce an energy imbalance on the System which might be addressed by Transco accepting OCM offers. Those might include demand-side offers on behalf of power generators.

Transco therefore concludes that the effect of implementation of the Modification Proposal on the electricity regime is unlikely to be neutral but notes that this issue has not been

raised within the representations received.

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

Implementation of this Modification Proposal would strengthen the economic incentives that deter Users from making withdrawals which, in the absence of a counter injection, could cause the amount of gas in-storage to fall below the monitor level. This would not affect the present situation in respect of User costs where gas is withdrawn from storage during severe weather or when the monitor level reduces (eg late winter).

This is consistent with the Gas Transporter providing reasonable economic incentives for relevant suppliers to secure that domestic supply security standards are satisfied.

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, capital cost or operating implications which would arise from implementation of this 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:

Not applicable.

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

Transco is not aware of any consequences that this Proposal would have on price regulation.

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

Implementation of the Modification Proposal would transfer the cost arising from a storage counter injection, from Transco to the User whose actions gave rise to that injection. This would reduce the level of contractual risk to Transco.

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

Transco believes its existing computer systems and those of Users are sufficient to implement this Proposal. It is envisaged that an ad hoc invoicing system would be used in order to implement the revised charge structure.

7. The implications of implementing the Modification Proposal for Users

If withdrawal nominations gave rise to counter nominations from the Top-up Manager, Users with a firm Supply Point portfolio would face charges that do not exist at present. However, Transco is of the opinion that current arrangements could be regarded as insufficiently reflecting the requirement of suppliers to meet domestic supply security standards.

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

Users might be expected to recover additional costs from suppliers in the event that storage withdrawals caused the Top-up Manager to incur injection costs that were passed on to Users. However, in Transco's view, Users should not expect to use the full flexibility of a storage service if it caused gas-in-storage quantities to fall below the monitor level as this would indicate that insufficient provision had been made by Users to maintain their supply/demand balance during a severe winter.

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

Transco is unaware of any effect on the legislative and regulatory obligations and contractual relationships of Transco and each User and non-Network Code party.

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

Advantages:

- The necessity of counter injections by the Top-up Manager would be identified beforehand so incentivising Users to seek alternative means of maintaining a supply/demand balance on the Gas Day and so retaining quantities of gas-in-storage at monitor levels.
- Would strengthen the economic incentives referred to in Condition 9 (Network Code) Section 1 (d) of Transco's GT Licence.

Disadvantages:

- Potential of increased costs to Users.

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

Five responses were received to the consultation:

Respondent	Response
British Gas	Against
Centrica Storage Ltd (CSL)	Against
Entergy-Koch Trading (EKT)	Against
PowerGen (PG)	Against
TotalFinaElfGas & Power Ltd (TFE G&P)	Against

Relevant Objectives

TFE G&P considered implementation of this Proposal “does not facilitate the achievement of the relevant objectives and may serve to introduce perversities within Transco and Shipper balancing activities and hinder efficient operation of the wider gas market”.

EKT did not believe that “this modification proposal better facilitates the relevant objectives as it will unfairly penalise some shippers putting them at a competitive disadvantage”.

Transco Opinion

Transco recognises that Users might face some uncertainty as a result of withdrawals of gas from storage when such withdrawals would cause depletion beyond monitor levels. This uncertainty arises from the difference between the acquisition price of gas on the day and subsequent disposal price. Compared with the original Proposal, the revisions would to some extent reduce the uncertainty faced by the User nominating a storage withdrawal. Transco believes that this Proposal would more appropriately recover costs from Shippers that are presently met by Transco. By doing so Transco believes that this will improve domestic supply security.

Cost Assessment

In EKT’s view, the Modification Proposal did not clarify in sufficient detail which costs were included to enable Users “to assess the most efficient manner of delivering gas to the system.”

TFE G&P identified uncertainty “regarding the overall level of the charges envisaged under 0583, the ex-post nature of these charges and the limited cost recovery base would undermine the value of storage as an appropriate balancing tool at times of system peak.” It believed that “imposition of these charges would discourage storage users from withdrawing gas at times when one would reasonably expect to use Storage”.

Transco Opinion

This uncertainty arises from the difference between the acquisition price of gas on the day and the subsequent disposal price. Gas purchase costs would be incurred in accordance with normal gas trading activity and Transco would expect to dispose of the counter-injected gas at what it considers to be the most advantageous price and time. The remaining costs associated with purchase of storage capacity are generally published annually by the Storage Operators but, in addition, a User who withdraws gas-in-store has the ability to trade or transfer capacity to the Top-up Manager, in order to reduce its liability.

Transco would also point out that when the demand forecast indicates high national demand, that might, consistent with Transco's planning models, suggest that the use of storage gas is consistent with the maintenance of 1 in 50 year gas availability for the rest of the winter, then the monitor is accordingly adjusted downwards. This means that the Top-Up Manager would withdraw any injection nomination so that storage withdrawals would take place without Users incurring the additional charges that would be introduced as a result of implementation of this Proposal. It does not therefore follow that implementation of this Proposal would discourage the use of storage consistent with the maintenance of gas in store above security monitor levels.

Cost Targeting & System Operator Risks

EKT stated that targeting costs to the marginal shipper that on a particular day caused the monitor to fail, as well as causing a rush of withdrawals, could be regarded as discriminatory. It considered that "Modification 0583 operates on the basis that a storage user is creating excess costs for Transco by nominating to withdraw gas at the same time as the top-up storage manager is injecting gas to meet monitor levels." The imposition of charges "is a way to ensure that Transco's job is less risky at no cost to Transco itself." It believed that Transco as System Operator "is expected to bear some commercial risk, and this risk is accounted for in the calculation of its regulated risk and incentive arrangements." EKT concluded that it "is inappropriate for Transco to present the shifting of risk as an incentive measure on shippers".

BGT also commented that it believed the proposal to be discriminatory as "the proposed method of application of the costs only to those users withdrawing at the time that the gas-in-store falls below the monitor level is inequitable. Previous withdrawals, contributing to the low level would avoid exposure to the charge."

PG also considered that the proposed method of cost targeting towards shippers withdrawing on the day is inaccurate "... the costs of top-up are caused by other events from previous days causing large levels of gas to be withdrawn, or from previous Users withdrawing but not refilling".

CSL also believed the proposal would "not act fairly in charging such costs to shippers: even if the principle (which CSL opposes) of imposing added costs on shippers were adopted, there is no justification for focusing the proposed charges on shippers withdrawing gas on the day(s) when the monitor would otherwise be passed and not charging shippers who have withdrawn (and not refilled) inventory previously...".

Transco Opinion

The legal text provides for the Top-up Manager's net costs to be met by Users following

advance notification of Top-Up Monitor levels potentially being breached. Following issue of its advance notification, the Top-up Manager would only counter-inject, to match a User's withdrawal, to ensure that security of supply would not be impaired by the quantity of gas-in-storage falling below the Monitor level.

This Proposal addresses the costs incurred by the Top-up Manager on Gas Days where counter injection would have become necessary. Transco believes that these costs should be recovered by reference to gas flows on such days. This also addresses the concerns expressed in respect of the original Proposal where implementation would have led to cost focus on storage users.

Under the present Network Code arrangements, Transco bears the financial risks associated with storage withdrawals that, in the absence of a counter nomination, would lead to the monitor being breached. Transco does not consider that this risk, that is a consequence of Users making inadequate arrangements to meet 1 in 50 demand level, should be born entirely by the System Operator rather than by Users.

Use of Storage Services

BGT expressed the view that the application of the costs described in this Proposal "may add a further disincentive upon users to hold gas-in-storage.".

PG commented that "Generally, this proposal would lead to less flexibility and efficiency in the use of gas storage."

CSL considered that this Proposal "would expose storage users to added costs in certain, albeit infrequent, circumstances which must discourage use of certain storage services...."

Transco Opinion

Transco does not believe that implementation of the original Proposal would have had a material impact on the value of storage. Users would still have retained an effective balancing tool particularly in respect of days of high demand. The Proposal only envisaged charges when action is taken by the Top-Up Manager to prevent a breach in the Monitor level. Transco believes that the revisions to the Proposal will alleviate any outstanding concerns Users might have as costs would be associated with system flows rather than storage withdrawal activity.

Notification Period

EKT considered that the proposed notification period of 21:00 hours on the preceding day was insufficient, "given that Transco would have been monitoring the storage position closely and could make a reasonable assessment of likely storage levels well ahead of this period." "Shippers will need to know as far in advance as possible...." and also be advised of the length of time the constraint would operate.

Transco Opinion

The proposed notification period was based upon allowing sufficient time to evaluate the initial Storage Flow Notifications (SFNs), which should be received by 17:00 D-1, and assess whether they would cause a breach of the Monitor. Transco has discussed within the Planning and Security (including Storage) Sub-group (PSS) how more operational information could be given to Users on gas-in-storage vs monitor levels and would work with Storage Operators in providing this, if desired.

Implementation

BGT stated that if this Proposal were to be implemented "it was essential that this were well in advance of the start of the storage year" in order to facilitate evaluation of storage services in the Annual Storage Invitation.

Transco Opinion

In order to assist Users in their evaluation of storage services for the 2003/04 storage auction, Transco agrees that a prompt decision would be helpful.

Top-up Costs

BGT was concerned that the Proposal re-opened the debate on the re-location of Top-up Costs from Transco to Users of storage facilities. "Previous Modification proposals had stimulated extensive debate on the responsibility for costs of Top-up. The outcome had been to clearly establish that the costs should be borne by the Transporter."

Transco Opinion

Transco would refer to Ofgem's letter of rejection to Modification Proposal 0472 "Restoration of Funding for National Top-up" dated 21 May 2002 : "Against this background, consideration has to be given to the nature of this obligation and the basis on which any funding might be permitted. One of the factors that would need to be considered in allowing the recovery of these costs would be the extent to which they had been incurred efficiently. To allow inefficiently incurred costs to be passed through in this way would be contrary to customers' interests." There is no indication in this letter that the principle of Users funding Top-Up is disputed - only whether Top-Up costs have been efficiently incurred. Transco believes that if this Proposal were implemented the Top-Up Manager would procure gas with due regard for prevailing prices in the OCM and the markets which must therefore be considered to be efficient. As far as storage capacity is concerned, the User would not be incentivised to trade this capacity with the Top-Up Manager at an inefficiently high price as it would essentially be recharged to the same User at the same price.

Repeated Renomination Risk

CSL identified an apparent shortcoming under the present Network Code provisions:

"As we interpret the relevant Code rules, Transco monitors the gas inventories at each storage facility and would seek to inject gas to avoid the inventory falling below a 'monitor level'.

For the Rough storage facility, an injection nomination during the winter season would not necessarily result in a reduction in the net quantity withdrawn. CSL normally makes interruptible withdrawal capacity available up to the level of the facility's physical capacity plus any injection nominations received. So if the facility was at full withdrawal rate an injection nomination from Transco would have the impact of enabling greater withdrawal nominations to be accepted.

We do not believe Transco has the right to prevent an injection nomination having this effect.

A consequence is that Transco might sometimes have to create several injection nominations on a day before any desired reduction in physical export is achieved.

On high export days in a winter sufficiently severe that the monitor is threatened, this would have a high cost, and the volume nominated would be likely to have a significant impact on gas prices.

We think similar rules are likely to apply at some other storage facilities. Also there may be facilities where Transco do not have a relationship with the storage operator such that an injection nomination need or would be accepted."

Transco Opinion

Transco is grateful to CSL for bringing this shortcoming to the attention of Network Code parties. Transco has secured relationships with the largest Storage Operators and believes that Top-Up counter-nominations would be accepted. It agrees, however, that there is a definite risk that any counter-nomination would be undermined by storage users making further withdrawal nominations. In mitigation of this risk, Transco believes that implementation of this Proposal would reduce the financial benefit of storage users increasing their nominations as interruptible.

Other Alternatives

EKT regards it as inappropriate for Transco to present the shifting of risk as an incentive measure on shippers." It considered that "the modification proposal could have examined other ways to encourage shipper behaviour." "... for example, contract for a shipper not to withdraw gas in certain circumstances." "The payment would reflect the value of the constraint placed on a shipper's normal commercial activities."

In order to mitigate the situation that Transco sought to address by raising the Modification Proposal, CSL suggested that the Code be amended to include draft Paragraph P3.4.7 of the legal text. It believed that the Top-up Manager's advance notification of a potential problem "... would have the effect of alerting the industry to potential problems and might have the effect of encouraging any shippers with alternative sources of gas (including demand-side reductions) to use them or offer them to the market".

Transco Opinion

Transco has discussed, within PSS, potential ways in which a User may be contracted to maintain minimum quantities. Whilst these discussions were positive, it was concluded that the additional costs in securing such contractual arrangements would probably exceed the likely costs of continuing present Top-Up arrangements. In the context of the whole Top-Up regime, Transco is willing to continue these discussions within PSS. Within the context of this Proposal, Transco is of the view that sufficient industry discussion has taken place, including inviting alternative proposals.

In response to CSL's suggestion, whilst Transco acknowledges that advance notification would be helpful, hence the inclusion of such, it does not consider the insertion of this paragraph alone into the Network Code would further incentivise Users to limit the extent of their withdrawal of gas in storage to maintain monitor levels.

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 enable compliance with safety or other legislation.

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

Transco does not believe that this Modification Proposal is required in respect of any proposed change in the methodology established under Standard Condition 4(5) of the statement; furnished by Transco under Standard Condition 4(1) of the Licence.

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

Transco is not aware of any programme of works that would be required as a consequence of implementing the Proposal.

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

It is proposed that Transco would recover its costs as soon as possible. Transco is not aware of any systems changes that would be required as a result of this Modification Proposal.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this Modification Proposal is implemented as soon as possible.

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 P: TOP-UP STORAGE

Add new paragraphs 3.4.8, 3.4.9, 3.4.10, 3.4.11, 3.4.12 and 3.4.13 to read as follows:

"3.4.8 Where the Top-up Manager determines there is a Winter Top-up Injection Requirement for a Storage Facility Type in respect of a Day pursuant to paragraph 3.4.1, the Top-up Manager shall notify Users by UK Link Communication by not later than 21:00 hours on the Preceding Day.

3.4.9 Where the Top-Up Manager has given notice under paragraph 3.4.8 and a User or Users withdraw gas from a relevant Storage Facility ("**relevant facility**") on a relevant Day, paragraph 3.4.10 shall apply.

3.4.10 Where this paragraph applies:

- (i) all costs ("**relevant costs**") incurred by the Top-up Manager related to its injecting gas (pursuant to paragraph 3.4.3) ("**relevant gas**") into the relevant facility by reason of the withdrawal of gas by User(s), and all relevant financing costs, which in each case but for this paragraph 3.4.10 would or may be Top-up Costs, shall not be Top-up Costs for the purposes of paragraph 6;
- (ii) any relevant revenues received by the Top-up Manager in respect of relevant gas shall not be Top-up Revenues for the purposes of paragraph 6; and
- (iii) all net relevant costs shall (if positive) be payable by Users to the Top-up Manager and (if negative) be payable by the Top-up Manager to Users, in each case in accordance with the provisions of paragraph 3.4.12.

3.4.11 For the purposes of paragraph 3.4.10:

- (i) the "**closing relevant cost balance**" for a Day is the amount of the opening relevant cost balance, plus the amount (if any) of all relevant costs incurred by the Top-up Manager on that Day, less the amount (if any) of all relevant revenues received by the Top-up Manager on that Day;
- (ii) the "**net relevant costs**" for a Day are the total relevant costs less relevant revenues (and shall be positive if total relevant costs exceed relevant revenues and negative if relevant revenues exceed total relevant costs);
- (iii) the "**opening relevant cost balance**" is:
 - (a) on the first Day of the Storage Year, zero; and
 - (b) for each subsequent Day, the amount of the closing relevant cost balance for the Preceding Day;
- (iv) the "**relevant financing costs**" for a Day is the amount calculated as the Neutrality Interest Rate for the Day multiplied by the closing relevant cost balance for the Day and shall be deemed to be incurred on each Day (and if the closing relevant cost balance on any Day is negative, the relevant financing costs for that Day shall be deemed to be zero);

- (v) the “**relevant revenues**” for a Day are the revenues received by the Top-up Manager in respect of a Top-up Storage Transfer of relevant gas; and
- (vi) the “**total relevant costs**” for a Day are the relevant costs plus relevant financing costs.

3.4.12

- (i) Where net relevant costs for any Day are positive and are accordingly payable by Users to the Top-up Manager pursuant to paragraph 3.4.10(iii), each relevant User shall pay to the Top-up Manager a charge (“**Top-up Winter Injection Neutrality Charge**”) calculated in accordance with the provisions of paragraph (iii) below.
- (ii) Where net relevant costs for any Day are negative and are accordingly payable by the Top-up Manager to Users pursuant to paragraph 3.4.10(iii), the Top-up Manager shall pay to each relevant User a charge (“**Top-up Winter Injection Neutrality Charge**”) calculated in accordance with the provisions of paragraph (iii) below.
- (iii) In respect of each Day for which a Top-up Winter Injection Neutrality Charge is payable, it shall be calculated in respect of each relevant User as being the amount of the net relevant costs for the Day divided by the sum of all relevant UDQOs for the Day multiplied by the sum of that relevant User’s relevant UDQOs for such Day.
- (iv) For the purposes of this paragraph 3.4.12, “**relevant User**” and “**relevant UDQO**” shall have the meanings given to such terms in paragraph 6.4.2.

3.4.13 Top-up Winter Injection Neutrality Charges shall be invoiced and are payable in accordance with Section S.

Signed for and on behalf of Transco.

Signature:

NT & T

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 **0583**, version **1.0** dated **25/02/2003**) 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 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.