

## TOTAL GAS & POWER LIMITED

Modification Panel Secretary  
Joint Office of Gas Transporters  
Ground Floor  
51 Homer Road  
Solihull  
West Midlands  
B91 3QJ

26 July 2007

Dear Julian,

### **Modification Proposals 0152V, 0152AV and 0152VB: Limitation on Retrospective Invoicing and Invoice Correction**

Thank you for the opportunity to comment on the above UNC Modification Proposals.

Total Gas & Power Limited (TGP) welcomes the general principle to introduce a reduction of the current invoice billing period from 1 February 1998 to a later date.

TGP recognises this as a sensible idea which would hopefully have the effect of reducing the potential for “surprise” invoices being presented when there is little chance that the amounts can be recovered where the relationship with the customer has ended a long time ago. It should also reduce administration costs and have the effect of ridding the industry of unexpected historical invoicing problems.

However, despite the advantages outlined above, TGP is conscious of the fact that if a shorter limitation period for invoices is introduced, then credits relating to periods over the new limitation period will be lost.

Nevertheless, TGP supports Modification Proposal 0152 AV proposed by Statoil UK Limited to restrict the invoice billing period to a minimum of 6 years and 0 days and a maximum of 6 years 364 days on a rolling, cutover basis using an implementation date set up in advance.

Although TGP agrees with the general principle proposed by British Gas Trading in Modification Proposal 0152 V to introduce a limit to invoice billing periods and bring forward the current back stop date relating to billing from 1 February 1998 to a later date, TGP finds that Statoil’s Modification Proposal 0152 AV achieves this principle in a better way by allowing Transporters who are owed monies from customers to benefit from a new limitation period which is in line English Law statutory limitation period requirements.

Currently, Modification Proposals 0152V and 0152VB - put forward by British Gas Trading and Wales & West Utilities respectively – both propose that the period for billing invoices should be limited. However, in our opinion they both fail to achieve this general accepted principle by proposing limitation periods which are too short and therefore inappropriate.

On the one hand, Modification Proposal 0152V proposes a 5-year model where the minimum retrospective billing period will be 4 years and 0 days and the maximum permitted retrospection will be 4 years and 364 days.

On the other hand, Modification Proposal 0152VB proposes a 6-year model where the minimum retrospective billing period will be 5 years and 0 days and the maximum permitted retrospection will be 5 years and 365 days.

TGP is of the opinion that such short limitation periods are of concern in that, if implemented, they could leave



suppliers (in particular I&C shippers) exposed to their customers. TGP is concerned that in certain circumstances it may be possible for a customer to claim an additional year from shippers, which the shipper could not recover from the transporter. For these reasons, TGP would prefer the new limitation period to be in line with the Limitation Act 1980 requirements, outlined here below.

For the purposes of clarification, under English Law, The Limitation Act 1980 outlines the time limit within which a creditor can chase a debtor for outstanding debts. Section 5 of the Act provides that:

*“An action founded on a simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued”.*

Moreover, Section 9(1) goes on to say that:

*“An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the case of action accrued”.*

It should be noted that the Limitation Act 1980 only applies when no contact has been made between the creditor and the debtor within the given time limit. It also only applies to residents of England and Wales. Therefore, different rules will apply in Scotland.

Under Sections 5 and 9, creditors are given a fixed period of 6 years to chase their debtors. It should be noted however that the time limit begins from when the contract was breached and NOT from the date of the invoice.

If the creditor fails to maintain contact with the debtor, for a period of 6 years or more, then the outstanding debt becomes "Statute Barred" under the provisions of the Limitation Act 1980.

Creditors can only recover monies due under invoices for up to the expiration of 6 years from the date when the contract was breached. In case of invoices, this would be from the date when the monies due should have been paid but the debtor has failed to do so and the debtor admitted that he or she owed the payment to the creditor.

However, the 6-year limitation rule does not always apply strictly and depends very much on the facts of each individual case and also on the date upon which the existence of a cause of action is discovered.

Statoil's Modification Proposal 0152AV is the only proposal which takes into account the provisions of Sections 5 and 9 of the Limitation Act 1980 by recognising that the statutory requirement is a cut off at the expiration of 6 years (and not before) by proposing to restrict the invoice billing period to a maximum of 6 years 364 days (and a minimum of 6 years and 0 days) on a rolling, cutover basis.

We would like to reiterate that the requirement under Sections 5 and 9 of the Limitation Act are that actions to recover sums due under a contract or an enactment cannot be brought after the end of 6 years from the date when the contract was breached (i.e. they cannot be chased after 6 years and 364 days). Statoil's Modification Proposal is the only one recognising this and proposing an appropriate limitation period which is not too short (like the other two Modification Proposals) and which is in line with statutory requirements.

As different limitation periods may be required under Scottish Law, TGP is unable to say whether Statoil's proposal complies with the requirement in Scotland.

We hope you find our comments useful and should you have any queries then please do not hesitate to contact us.

Yours sincerely

David Faragher  
Head of Legal & Regulation

