

Modification Report
Responsibilities following the Appointment of a Supplier of Last Resort
Modification Reference Number 0580

Version 3.0

This Modification Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

Under Ofgem's arrangements to appoint a SoLR, only suppliers with appropriate shipping arrangements are eligible for appointment. It is proposed that all responsibility for energy balancing and transportation would transfer to the shipper contracted to the appointed Supplier with effect from the Date of Appointment as a SoLR. From this date the shipper would be responsible for the Network Code obligations relating to energy balancing and transportation charges in respect of the portfolio of the failed shipper.

In order to allow the shipper of the SoLR ("the new shipper") to operate its newly acquired portfolio using UK-Link / AT-Link systems, the failed shipper's account would be made available to the new shipper. This would require a number of data transfer processes and the issue of new system security IDs to permit the new shipper to access failed shipper's portfolio. Transco would endeavour to effect the data transfer and issue the IDs to the new shipper during the Day following the Day on which it was notified of the new shipper's appointment and they would be useable from 06:00 on the Day following issue. It is anticipated that this would coincide with the Date of Appointment.

Where Transco is notified of the identity of the new shipper early on the Day prior to the Date of Appointment, Transco would, at its discretion, endeavour to effect the data transfer and issue the IDs for the commencement of the following Day.

This solution would permit one shipper, shipping for one or more suppliers, to manage the portfolio of the failed shipper, although as soon as the new portfolio becomes the responsibility of the new shipper, normal supply point transfer rules would apply.

Accordingly, Transco would undertake a review of the Energy and Transportation credit arrangements of the new shipper in light of its new portfolio and advise it of any new credit arrangement that need to be put in place within 14 days of Transco becoming aware of the appointment.

2. Transco's Opinion

Transco is of the opinion that this proposal represents a significant improvement to the process currently in place for dealing with the transfer of Network Code obligations and responsibilities relating to affected supply points in the event of a shipper failure. Implementation of the proposal would ensure that as soon as a SoLR has been appointed,

and Transco informed of the identity of new shipper, each of the affected supply points can be made the responsibility of the new shipper promptly, reducing the disruption caused by the failure.

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

Implementation of the proposal would ensure that gas offtaken by consumers forming the portfolio of the failed shipper is correctly allocated and that financial responsibility for energy balancing and transportation services are attributed to the new shipper from the date of appointment of a SoLR with the minimum amount disruption and off-line processing. The rapid and complete transfer of Network Code obligations in a one-off transaction should increase confidence that process is effective and should reduce risk for remaining shippers and Transco alike and, therefore, could be expected to facilitate a more competitive environment for shippers to operate.

**4. The implications for Transco of implementing the Modification Proposal , including
a) implications for the operation of the System:**

There would be no implication for the operation of the system.

b) development and capital cost and operating cost implications:

It is expected that development costs would be incurred but they would be minimal.

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:

No special cost recovery arrangements are envisaged.

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

Transco does not believe that this proposal would have any effect 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 this proposal would reduce Transco's contractual risk since the proposed solution establishes contractual responsibility for transportation charges promptly on advice of the identity of the new shipper. Under the existing provisions, the transfer of affected supply points by the existing supply point transfer rules to the new shipper could take some time. Although the new shipper would be responsible for all the supply points from the date of appointment, the derivation of invoices would be complex and time consuming, since the process would require two portfolios, (that is, failed Shipper (supply points not transferred) and new shipper (supply points successfully transferred)) to be reconciled with a risk that not all charges would be correctly allocated.

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

The solution described in the proposal requires that information relating to the failed shipper's portfolio is copied to into a new secure partition of the new shipper's UK-Link server. This information would then be accessed by the new shipper using a new ID and password. The new shipper would, in system terms, effectively take on the identity of the failed shipper. Transco's capability to carry out this activity already exists and it is not intended to develop any additional functionality. It is not anticipated that this solution would require shippers to modify their systems.

7. The implications of implementing the Modification Proposal for Users

The ability to promptly attribute Network Code obligations relating to energy balancing to the new shipper should reduce the risk of charges being smeared across the remainder of the community. For remaining shippers, implementation would ensure that there would be minimal financial impact by the failure of another shipper, when compared to the situation that could arise if this proposal was not implemented.

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

Implementation of the proposal would ensure that the appointment of a supplier as the SoLR would be recorded by all parties in the contractual chain as quickly as practicable. This should ensure that invoices for services supplied by the new shipper to the SoLR are correctly targeted and forwarded with minimum disruption.

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 aware that implementation of the proposal could required it to release information classed as confidential by the Network Code. Consequently, as part of the proposal, Transco requires the failed shipper to be deemed to have consented to this information being passed to another party in order to comply with the requirements of the Utilities Act 2000. Similarly, implementation will require to release personal information relating to some consumers and, to remain compliant with the Data Protection Act 1998, the proposal also contains a provision for deemed consent by the failed shipper to release this information.

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

Advantages

Provisions would be included in the Network Code establishing the process for ensuring the supply points of a failed shipper are quickly transferred to the new shipper, thereby establishing responsibility for Network Code obligations and accountability. Consents incorporated in the proposal permit the forwarding of supply point and portfolio information to the new shipper to minimise risk associated with taking on supply points in bulk.

Disadvantage

The technical solution proposed to support implementation only permits one new shipper (although this shipper could be shipping on behalf of more than one SoLR). However, while this would be the position on the first day following appointment, there would be nothing to prevent affected supply points subsequently transferring between shippers in accordance with normal supply point transfer rules.

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

Representations have been received from six shippers: **BP Gas Ltd., British Gas Trading Ltd., Innogy plc, London Electricity Group Plc, Powergen UK Plc and SSE Energy Supply Ltd.**

Most of the representations express some level of support for the proposal; only Powergen recording on its representation that it is against implementation.

The majority of representations reiterate a point stated in the proposal that the information transfer solution purported here only permits one "new shipper". Transco is aware that this could prevent the appointment of more than one new shipper but the limitation is a result of a technical solution that relies on being able to copy portfolio data from failed shipper's server to the new shipper's server completely and in a single transaction.

Transco has investigated a number of variations of this solution, that is the copying of data from the failed shipper to the new shipper by Transco, to establish whether the appointment multiple SoLR could be supported. It is Transco opinion that none of these variations provide satisfactory solutions or would be available without significant systems development.

First, copying the data to the servers of multiple new shippers will have the effect of duplicating supply point information which could result in new shippers not being able to balance accurately or have a true picture of their portions of the failed shippers portfolio. Consequently, this is not seen as a satisfactory method of dealing with appointment of multiple SoLRs

Secondly, splitting the failed shipper's portfolio between new shippers using a different system solution would present significant logistical and technical problems because the Sites and Meters and AT link information held on the server would have to split down to supply point level between the new shippers and subsequently aggregated together to establish the new shippers' portfolios. Transco do not have the capability to provide this

solution and it is not seen as viable because of its complexity and the time available to Transco to effect the data transfer once it is advised of the identity of the new shipper.

One option that would support multiple SoLRs is to transfer all the supply points to one new shipper, in line with the proposal, and subsequently transfer the supply points into another shipper portfolio using the supply point transfer process. This would have the advantage that all the data would move between shippers using a tried and tested process in a controlled manner. The disadvantage is that it would take time to transfer a large portfolio (approx. 30,000 transfers per day depending on other system traffic) and would require an element of cooperation and agreement between new shippers to cover the transition period.

Powergen state they cannot support the proposal because "the wording and meaning is confusing." (this point of clarification also relates to a point raised in SSE's representation.) Transco response: the purpose of the proposal is to ensure that in the event that a shipper and supplier fails, the processes and consents are in place to permit portfolio information to be passed to the new shipper (the SoLR's shipper) promptly and efficiently, thereby ensuring that the new shipper can immediately enjoy the rights and take on the responsibilities of the Network Code in respect of its new portfolio.

In the event of supplier only failure, the shipper would still be a Network Code User and responsibility for the portfolio would continue to reside with it. In the event of a shipper only failure, unless a SoLR (Note: Ofgem may appoint a SoLR if a supplier's licence is revoked and revocation is not limited to financial failure) is appointed these provisions would not apply. Therefore, Transco believes that this proposal provides a significant reduction in community risk by dealing with the most likely scenarios.

Innogy states that they would prefer a best endeavours obligation on Transco to provide information on the day it is advised that a SoLR has been appointed.

Transco response: the reasonable endeavours condition only applies to the transfer the information on the same day that Transco is advised of the new shipper's identity and its ability to undertake the transfer is dependant on the time of day of advice and other business commitments. While Transco acknowledges that it is in all parties interests that it discharges its obligations in this matter quickly and efficiently, given its other commitments, Transco believes that a "reasonable endeavours" obligation is appropriate for a within day transfer.

BP states that "Transco has clearly addressed this issue in so far as it affects Transco itself".

Transco response: the proposal seeks to minimise the risk for all Network Code parties: Users (energy balancing neutrality charges) and Transco (unpaid transportation charges), and minimise the period of uncertainty for end consumers caught up in the failure.

Powergen raises the point "that the proposal does not make clear "how the shipper would become responsible for outstanding debts"

Transco response: unpaid invoices (transportation and energy) relating to the failed shipper would be issued to the appointed administrator and Transco would seek for these to be settled using remaining funds or instruments of security. This issue resolution of unpaid

invoices is dealt with in other sections of the Code and, therefore, does not form part of this proposal.

London Electricity's representation focused mainly on post transfer operational issues. Transco would like to reiterate that the aim of the proposal is to minimise community risk by establishing an accountable User for the portfolio. Undoubtedly issues such as those listed in the representation could arise should a shipper be terminated, but the occurrence of these issues would be independent of implementation. Issues of this nature should be raised in the appropriate fora, i.e. Supply Point and Billing Workstream, Billing Operational Forum or at the Energy Balancing Credit Committee.

SSE comments that the timescale for putting in place additional security could be reduced. Transco comment: Transco would prefer a shorter timescale but believe that the proposal is a fair balance.

SSE raises the point that the findings of the recent SoLR exercise could have an impact on the proposal. Transco's understanding of the exercise is that it was used to test data flows between suppliers and Ofgem, to dry-run the decision making process used to appoint the SoLR and to advise the appointee; it did not simulate data flows between the SoLR and Transco that would be required post-appointment. Transco, therefore, is of the view that the exercise findings should not affect implementation of this proposal.

SSE questions whether or not other supply point transfer mechanisms should be considered. Transco requires this proposal to obtain consents to release information that could in practice be difficult to extract from a failed shipper. Other, so called, "bulk supply point transfers" processes involve portfolio "trade sales" or Network Code assignments involving cooperating parties. The purpose of this proposal is to ensure Transco has robust legal cover to undertake, in the circumstances specified, a transfer of commercially sensitive information between shippers for the benefit of the whole community.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

This modification is not required to facilitate 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

This modification is not proposed as a result of changes to the methodology established under Standard Condition 4(5).

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

The functionality to implement the technical solution already exists and could be utilised at short notice.

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

This proposal could be implemented very soon after direction by modifying existing procedures. The main UK-Link system does not require modification and, consequently, no implementation delays for Transco IS reasons are anticipated.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that Ofgem direct implementation.

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 G - RE-NUMBER PARAGRAPH 2.1.7 AS 2.1.14 AND INSERT NEW PARAGRAPHS G2.1.7 TO 2.1.13 AS FOLLOWS

2.1.7 For the purposes of paragraphs 2.1.8, 2.1.9, 2.1.10, 2.1.11, 2.1.12 and 2.1.13:

- (a) where a User has been given a Termination Notice by Transco (under Section V4), all Supply Meter Points in respect of which the Discontinuing User was the Registered User immediately prior to the User Discontinuance Date shall be known as **"the Terminated Supply Meter Points"**;
- (b) a **"Supplier of Last Resort"** is a supplier whom by virtue of Standard Condition 29 of the Supplier's Licence has been **directed** by the Authority to supply gas in accordance with that condition in respect of any or all of the Terminated Supply Meter Points;
- (c) **"the Last Resort User"** is a User who is the first User, following the appointment of the Supplier(s) of Last Resort, to become the Registered User of all of the Terminated Supply Meter Points;
- (d) **"day of issue"** is the Day following the day of notification;
- (e) **"day of notification"** is the Day on which Transco receives written notice from the Authority of the appointment and identity of the Last Resort User;
- (f) **"TSMP Information"** is relevant information (including, but not limited to, Protected Information) relating to the Terminated Supply Meter Points to which the Discontinuing User would have had access through UK Link, immediately prior to the User Discontinuance Date.

2.1.8 Where Transco has given a Termination Notice (under Section V4) to a User and the Authority **directs** a Supplier of Last Resort in respect of a Terminated Supply Meter Point, then notwithstanding any other provision of Code, the Last Resort User shall become the Registered User of the Terminated Supply Meter Points, thereby accepting the benefit of the rights and the burden of obligations under Code, the Framework Agreement and any relevant Ancillary Agreement, in respect of the Terminated Supply Meter Points (including without limitation the payment of Transportation Charges and Energy Balancing Charges in respect thereof) with effect from and including the date of the appointment of the Supplier of Last Resort.

2.1.9 To assist the Last Resort User in exercising its rights and discharging its obligations in respect of the Terminated Supply Meter Points Transco shall use reasonable endeavours, subject to paragraphs 2.1.11, 2.1.12 and 2.1.13, to provide to the Last Resort User on the day of issue a copy of the TSMP Information which can be accessed by the Last Resort User through UK Link.

- 2.1.10 (a) Transco shall undertake a review of the Last Resort User's Code Credit Limit and Secured Credit Limit as soon as reasonably practicable following the day of notification, and shall advise the Last Resort User, as soon as reasonably practicable thereafter but in any event not later than 3 Days after the day of notification, of any further security that will be required to be provided by the Last Resort User in accordance with paragraph 2.1.10(b);
- (b) in the event that following the review referred to in paragraph 2.1.10(a) Transco notifies the Last Resort User that additional security is required, then the Last Resort User shall be obliged to provide the requisite security in accordance with the Code Credit Rules or Energy Balancing Credit Rules (as appropriate) in favour of Transco **as soon as reasonably practicable thereafter but in any event no later than 14 Days** of the day of notification and upon receipt of that security Transco shall revise the Last Resort User's Code Credit Limit and/or Secured Credit Limit (as appropriate) **as soon as reasonably practicable thereafter but in any event no later than 14 Days** after the **date of notification to take effect from the date of that revision**;

- (c) in the event that security is required to be provided by the Last Resort User pursuant to paragraph 2.1.10(a) but the Last Resort User fails to provide the security in accordance with paragraph 2.1.10(b), then the Code Credit Limit and/or Secured Credit Limit (as appropriate) shall not be revised pursuant to this paragraph 2.1.10 and Transco shall be entitled to exercise those rights and remedies available to it pursuant to V3.3 or the Supplement, as appropriate.
- 2.1.11 By virtue of this paragraph 2.1.11 the Discontinuing User hereby is deemed to have given its written consent for the purposes of both paragraph V5.5.2(a) and Section 105 of the Utilities Act 2000 (as amended from time to time) to Transco to disclose to the Last Resort User the TSMP Information pursuant to paragraph 2.1.9 above.
- 2.1.12 It is acknowledged that the TSMP Information contains information which has been provided to Transco by the Discontinuing User and accordingly the Last Resort User hereby acknowledges and agrees that:
 - (a) the TSMP Information disclosed to it pursuant to paragraph 2.1.9 above shall not have been independently verified;
 - (b) it shall be solely responsible for making its own judgement and decision on the TSMP Information disclosed to it;
 - (c) neither Transco, nor any of its employees, agents, consultants, advisers or directors, accept responsibility for, or make any representation or warranty (express or implied) regarding, the accuracy or completeness of the content of the TSMP Information; and
 - (d) Transco shall have no liability to the Last Resort User, in respect of any of the contents of the TSMP Information.
- 2.1.13 For the purposes only of enabling Transco to comply with the provisions of paragraph 2.1.9, the Last Resort User shall execute all such documents, deeds and assignments and perform such acts as Transco may reasonably require, including, without limitation, executing any relevant documents, deeds and assignments, or perform such acts, necessary to ensure compliance with the provisions of the Data Protection Act 1998 (as may be amended from time to time).

SECTION V - AMEND PARAGRAPH 3.2.4 AND INSERT NEW PARAGRAPH 3.2.4(c) AS FOLLOWS:

- 3.2.4 (a) A User's Code Credit Limit may from time to time be reviewed and revised, in accordance with the Code Credit Rules, save where either paragraph 3.2.4(b) or 3.2.4(c) applies, on notice of not less than 30 Days (or any lesser period agreed by the User) to the User:
 - (i) at intervals of approximately 12 months;
 - (ii) at the User's request (but subject to paragraph 3.2.7);
 - (iii) where any published credit rating of the User or any person providing surety for the User is revised downwards;
 - (iv) where (but without prejudice to any requirement of the Code Credit Rules) any instrument of surety or security expires or is determined;

- (v) at Transco's request where at any time Transco has reasonable grounds to believe that the effect of the review will be to reduce the User's Code Credit Limit.
- (b) Where any published credit rating of the User or any person providing surety for the User is revised downwards to the extent that the said credit rating following such revision is less than the minimum prescribed credit rating as set out in the Code Credit Rules, a User's Code Credit Limit may be immediately reviewed and revised by Transco in accordance with the Code Credit Rules, on notice to the User.
- (c) Where a Supplier of Last Resort (as defined in paragraph G2.1.7(b)) has been appointed and paragraph G2.1.8 applies, a Last Resort User's Code Credit Limit may be reviewed and revised by Transco in accordance with paragraph G2.1.10.

THE SUPPLEMENT - AMEND PARAGRAPH 2.2.6 AND INSERT NEW PARAGRAPH 2.2.6(c) AS FOLLOWS:

- 2.2.6 (a) A User's Secured Credit Limit may also be revised, in accordance with the Energy Balancing Credit Rules, save where either paragraph 2.2.6(b) or 2.2.6(c) applies, on notice of not less than 30 Days (or any lesser period agreed by the User) to the User:
- (i) at intervals of approximately 12 months;
 - (ii) where any published credit rating of the User or any guarantor is revised downwards;
 - (iii) where (but without prejudice to any requirement of the Energy Balancing Credit Rules) any Guarantee or instrument of Security expires or is determined;
 - (iv) where at any time Transco has reasonable grounds to believe that the effect of the review will be to reduce the User's Secured Credit Limit.

provided that nothing in this Supplement shall require Transco to undertake a review under paragraph 2.2.6(ii) or 2.2.6(iii).

- (b) Where any published credit rating of the User or any guarantor providing security for the User is revised downwards to the extent that the said credit rating following such revision is less than the minimum prescribed credit rating as set out in the Energy Balancing Credit Rules, a User's Secured Credit Limit may be immediately reviewed and revised by Transco in accordance with the Energy Balancing Credit Rules, on notice to the User.
- (c) Where a Supplier of Last Resort (as defined in paragraph G2.1.7(b)) has been appointed and paragraph G2.1.8 applies, a Last Resort User's Secured Credit Limit may be reviewed and revised by Transco in accordance with paragraph G2.1.10.

Signed for and on behalf of Transco.

Signature:

Steve R Phillips
Director of Shipper Services

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 **0580**, version **3.0** dated **18/12/2002**) 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 **3.0**.

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 appropriateprovided 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.