

Modification Report
Obligation on Transco to publish TFA data
Modification Reference Number 0593
Version 2.0

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 Proposer stated that :

"Users should also have access to information about TFAs (Transportation Flow Advice) as they may be entitled to compensation under Section I of the Network Code where a TFA is issued. To make this effective, Users must have sufficient information available to them to assess whether they are entitled to compensation. If Users do not have this information, they will not be in a position to claim compensation. If compensation cannot be claimed due to lack of the relevant information, this will undermine the current entry capacity arrangements. Shippers will not be able to purchase financially firm entry rights. Shippers will face the risk that rights can be removed through the issuing of a TFA without compensation being paid.

Obligation to publish information and method of publication

Transco should be obliged to publish detailed information regarding any (and all) TFAs issued since 1 October 2002.

For TFAs issued after the date of implementation of this modification, this information should be published the day after the Gas Day for which the TFA was issued. For TFAs issued before the date of implementation of this modification, information should be published within one day of implementation.

Transco should publish all information relating to TFAs on the information exchange website, as soon as is practically possible after the implementation of this modification. During any intervening period, Transco should use the Shipper Information System and/or fax communication to provide the data to shippers.

Information to be published

Transco should confirm whether, in Transco's view, the TFA was issued for 'Gas Quality' or 'Capacity' purposes.

In relation to 'Gas Quality' TFAs, Transco should publish a brief description of why it was necessary to issue the TFA for each ASEP where a TFA was in place (i.e. what characteristic of the gas being delivered was not within Network Code entry specifications). For each ASEP where a TFA was issued, Transco should also publish details of the time that the TFA was put in place, its duration and specific details of the entry flow restrictions that applied whilst the TFA was in place.

In relation to 'Capacity' TFAs, Transco should publish information relating to each ASEP where a TFA was issued. For each ASEP, Transco should publish whether the TFA was temporary or permanent (i.e. whether it applied for part of the Gas Day or until the end of the Gas Day). Transco should also publish the time that the TFA was put in place, the duration of the TFA and specific details of the entry flow restrictions that applied whilst the TFA was

in place."

2. Transco's Opinion

Transco observes that the suggested justification put forward in the Proposal is to enable Shippers to assess whether they are entitled to compensation under Section I of the Network Code.

Under the present arrangements, Transco notifies Shippers of the occurrence of a TFA, and the entry terminal to which it applied, on the following day. This is provided via the Operational Summary on the Shipper Information Service. Transco believes it would be possible to enhance this by specifying the nature of the TFA (i.e. Gas Quality related or Capacity related), and in respect of "Capacity" related TFAs, details of flow quantities as described in the Modification Proposal, providing commercial confidentiality is maintained. Network Code Section I does not provide for Shippers to claim for compensation in respect of "Gas Quality" TFAs as it is Shippers' responsibility pursuant to Section I to tender for delivery gas that complies with the relevant gas quality entry specification in place at that entry point. Should gas be tendered outside of the relevant specification Transco is entitled to reject that gas.

In considering whether to submit a claim, Shippers do so primarily on the details of their allocated quantities received from their Claims Validation Agent which, when compared to their entry nominations, indicate whether their flows have been affected. Therefore, in Transco's view, shippers only need to be notified by Transco that a TFA has occurred, the relevant ASEP to which it applies, and the nature of the TFA (i.e. Gas Quality or Capacity) to facilitate a decision about whether a Section I claim might be appropriate.

The requirement on DFOs to inform Transco of expected end of day quantities (contained in Delivery Flow Notifications or "DFNs") and, at those ASEPs where gas measurement equipment is third party owned, gas specification data is contained in the relevant Network Entry Agreements (NEAs) or Local Operating Procedures for the system entry point concerned. The arrangements provide that disclosure of this by DFOs is restricted to Transco alone, and is for the sole purpose of ensuring the safe and efficient operation of the System. The disclosure of information to the public domain, to the level of detail described by the Proposal, for TFAs relating to Gas Quality reasons could therefore place Transco in breach of confidentiality agreements. This might be expected to be inconsistent with facilitating competition and efficient operation of the system if it were to lead to degradation in the extent and quality of information provided to Transco.

In light of confidentiality issues and since gas quality TFAs do not provide a basis for compensation claims, Transco does not believe implementation of the Proposal would be expected to further the relevant objectives.

Transco does not believe implementation of the Proposal would have implications for the electricity regime.

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

The Proposer argues that implementation would allow Shippers to monitor Transco's use of TFAs more effectively and claim compensation, where firm capacity rights have been affected. This would build greater confidence and understanding in the capacity arrangements and would lower shipper's perception of risk. Implementation would, in the Proposer's view, also ensure that Transco uses TFAs only when necessary and that Transco also faces some of the costs associated with using TFAs to manage constraints under its SO incentives. This would, over time, lead to more efficient operation of the System by Transco and facilitate competition between shippers and suppliers.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

Transco would anticipate no implications for the operation of the System provided there was no degradation in information received.

b) development and capital cost and operating cost implications:

The publication of the detailed information envisaged by the Proposal would be via the shipper information service or the Information Exchange web-site and therefore implementation would not be expected to lead to significant development costs. Any increase in ongoing costs would also not be expected to be significant.

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:

The impact of additional costs would be shared with Users under the terms of Transco's SO incentive scheme relating to internal costs. This would be reflected in the level of the NTS SO commodity charge

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

Transco anticipates there would be no such consequence.

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

If Transco is required to release information which is provided subject to a confidentiality agreement, this would be expected to increase the contractual risk faced by Transco.

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

The publication of the information described in the Proposal would be via existing computer systems and no such development implications would be expected.

7. The implications of implementing the Modification Proposal for Users

Users would receive information both in respect of each TFA that Transco declares following implementation of the Proposal, and for each TFA that has been declared since 1 October 2002.

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

The likelihood of Terminal Operators facing consequential claims from shippers for failure to meet contracted deliveries could increase as a result of the provision of information on Gas Quality TFAs.

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

Implementation could place Transco in a position of having to disclose, without the consent of the affected party, information that DFOs regard as commercially sensitive. At a number of entry points the release of information as defined in the Proposal would place Transco in breach of confidentiality clauses contained in the relevant entry agreements.

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

Advantages :

Provides additional information to Shippers associated with each TFA issued by Transco.

Disadvantages :

Transco would be required to publish, without the consent of the affected party, information that could be regarded by the DFOs to be commercially sensitive. At certain ASEPs the release of gas quality information could place Transco in breach of confidentiality agreements.

11. Summary of the Representations (to the extent that the import of those

representations are not reflected elsewhere in the Modification Report)

Representations were received from the following eleven parties :

ConocoPhillips	(CP)
AEP Energy Services	(AEP)
Innogy	(Inn)
Powergen	(PG)
British Gas Trading	(BGT)
BP Gas Marketing	(BP)
London Electricity Group	(LE)
Shell Gas Direct	(SGD)
Statoil UK	(Stat)
Total Fina Elf	(TFE)
Shell UK	(ShellUK)

Of these, four respondents (Inn, PG, AEP, LE) expressed support for implementation of the Proposal, and seven respondents (CP, BGT, BP, LE, SGD, Stat, ShellUK) expressed a lack of support for implementation of the Proposal.

General

All respondents that did not express support for the Proposal, did so, in the main, on the basis of potential breaches of confidentiality agreements, particularly associated with Gas Quality TFAs. Among these, BP and Stat expressed support for the principles of the Proposal and the wider dissemination of information in general, but could not support it in its current form. ShellUK stated that it “did not support the original proposal nor the proposal as revised by Transco”.

Three respondents (SGD, BP, ShellUK) argued that the Proposal would not meet the relevant objectives of improving the efficient and economic operation of the System and competition between shippers and suppliers, as the use of TFAs would remain unaffected.

Of those respondents that expressed support for implementation of the Proposal, the main argument was that additional information provided would improve market transparency and aid User’s understanding of Transco’s use of TFAs. Although in support of the Proposal, Innogy suggested that any information should not be commercially sensitive and that Transco’s proposals to provide additional information only in respect of capacity-related TFAs may be appropriate.

Transco response

Transco supports the general principle of information disclosure where such information would provide benefits, such as in market liquidity, and allow better informed decisions to be made by all market participants. However, consistent with respondents’ comments in respect of commercial confidentiality, Transco does not support implementation of the Proposal.

TFA Information and Commercial Confidentiality

All respondents not in support of implementation of the Proposal argued that the provision of the information, as described in the Proposal, particularly in respect of gas quality TFAs, would be likely to be a breach of confidentiality provisions set out in various entry agreements and is information that should be regarded as commercially sensitive.

Two respondents (BP, TFE) argued that the two causes of TFAs (capacity and gas quality) needed to be treated separately.

TFE commented that the gas quality entry conditions were detailed within a variety of bilateral agreements, the content of which were confidential between the relevant parties. The publication of information therefore, in its view, relating to gas quality “failures” would contravene confidentiality provisions and should not be put into the public domain.

ShellUK commented that it would certainly not be prepared to consent to the release of gas quality information by Transco. It argued further that information on gas quality is exchanged freely between operators and Transco to improve operational efficiency and to maintain system integrity, and that its release in to the public domain could well inhibit the desire of terminal operators to be so open in future.

BGT suggested the issue of TFAs crossed the boundary of the contractual relationships between Transco and Users under Network Code, and those with the Delivery Facility Operators (DFOs), and that implementation of this Proposal could prejudice an individual party's position in negotiating any claim arising therefrom. BGT further commented that divulging such information may place Transco in breach of its legal requirements.

AEP and PG argued that there would be no confidentiality issues where such information was released on an after-the-day basis.

LE commented that it recognised that the disclosure of specific types of information could be commercially sensitive and have associated confidentiality issues, but that it understood that OFGEM would carefully consider the confidentiality issues involved.

Two respondents (CP, BP) suggested that the release of Capacity TFA data could also introduce commercial consequences, but of a different nature, in that such information release would reveal individual shippers as distressed buyers.

ShellUK argued that even if the only information that was released was the classification of the TFA at a terminal level that there could be an increase in the number of enquiries or claims made against terminal operators and producers. It further stated that if Transco were to classify TFAs then it would certainly be considering very seriously its position in relation to Transco in the event of the release of commercially confidential, erroneous, inaccurate or misleading data.

TFE argued that as detailed information regarding TFAs and allocated quantities was already provided to shippers, post-day, it was unnecessary for any further clarification to be provided. BGT suggested that the current publication of information within the

summary on SIS does alert Users to the occurrence of a TFA and allows them to pursue further information from their DFO if this is not already available.

Transco response

Transco welcomes the comments provided in respect of whether implementation of the Proposal would lead to breaches of confidentiality agreements and the degree to which the information should be regarded as commercially sensitive.

The extent to which release of information relating to gas quality TFAs would constitute a breach in existing contractual arrangements, in Transco's view, would depend on the precise content of the entry agreement. For example, at the Bacton Interconnector and a number of storage sites, the gas measuring equipment is owned by third parties, and the release of gas specification details obtained from the third party concerned would be likely to constitute a breach of the relevant entry agreement.

Transco would be concerned with any requirement imposed on it to publish gas quality information which would indicate those sub-terminals that have been experiencing gas entry specification problems. Whilst the value of commercially sensitive information may reduce with elapsed time, on a D+1 basis Transco would be concerned with the fact that disclosing the details of any gas quality infringements at a sub-terminal level could represent a reputational risk to the DFOs involved and impact on the level of contractual risk between producers and shippers.

In its role as a Gas Transporter, and in order to allow it to operate the system in a safe and efficient manner, Transco relies on the effective relationship and regular co-operation that exists with DFOs. Transco is concerned about any effects implementation of this Proposal could have on the flow of information between itself and DFOs.

Transco agrees that the two types of TFA (i.e. capacity or gas quality) can be considered separately, and that commercial sensitivities would be different in respect of capacity TFAs.

Role of Ofgem

Five respondents (CP, BP, SGD, TFE, ShellUK) commented that they could see benefits in Ofgem taking a greater policing role in monitoring Transco's use of TFAs and therefore supported the release of Capacity TFA information to Ofgem alone.

SGD stated that it was unaware of any evidence that the commercial arrangements currently in place were not effective and that if Ofgem considered them to be unsatisfactory it should set out what problem it had identified as part of its decision on the Proposal.

ShellUK suggested that Ofgem was fully able to monitor Transco's use of TFAs, especially given the licence requirement on Transco under Special Condition 33.

Transco response

Transco provides Ofgem a weekly report that contains details of any Capacity TFAs issued in the previous week. Transco believes that the provision of these reports, in addition to periodic reporting at Industry meetings on Gas Quality TFAs are adequate to allow Ofgem to monitor Transco's use of TFAs but would be willing to discuss any improvements if considered necessary.

Liabilities and Compensation

Two respondents (ShellUK, SGD) commented that the Proposer's assumption that compensation could be claimed by shippers if a gas quality TFA was issued was incorrect, and that in fact it could lead to Transco making claims against shippers. In the event of such a claim by Transco, the shippers would then be fully aware of the details and it would be up to them to pass such claims to their sellers thus, in their view, maintaining the appropriate contractual chain. Therefore, they argued that if a shipper has not had an underdelivery or Transco has not made a claim for gas quality reasons then the information is not needed by shippers.

AEP noted Transco's views that compensation would not be paid where a gas quality TFA was issued. However, it suggested that there may be circumstances where shippers were entitled to compensation under Section I (or J) where off-specification gas was tendered and entry rights curtailed. Whether compensation was due or not, it was important that shippers and customers understood the nature and frequency of such events. The provision of more information, AEP further argued, would allow shippers and customers to consider whether the number and nature of these events were sufficient to justify a review of the current arrangements relating to gas quality and compensation under the Code.

AEP commented further that the legal text of Section I of the Network Code was consistent with any curtailment of entry capacity as the formula used to calculate compensation was based on aggregate capacity rights held relative to any volumetric constraint imposed by Transco through a TFA. AEP stated that it did not therefore agree with Transco's statement that shippers should base their claims on flow information received from DFOs.

CP suggested an industry discussion of the issues relating to compensation for TFAs.

Transco response

Network Code Section I provides for compensation claims by shippers in those circumstances where the TFA has resulted in Transco being unable to accept gas that has been tendered for delivery up to the User's Firm Capacity holding. Therefore compensation would not be due following failure to accept gas that is outside the entry requirements. Transco acknowledges that the formula in Section I 3.7 applies the capacity constrained amount in determining the amount of compensation, but for the purposes of determining those circumstances where compensation is due, the condition applied is whether the User could demonstrate beyond reasonable doubt that its deliveries had been affected.

Use of TFAs

AEP suggested that Transco's comments seem to misunderstand the potential effects of the issuing of TFAs on shippers' rights and the capacity market. Capacity rights, it

argued, represented a right to flow gas and could either be used to flow gas or to trade with shippers and Transco. Issuing a TFA at a terminal could affect the value of capacity held for trading purposes by reducing the value that shippers with gas at the beach would be willing to offer for capacity to land their gas. Where this occurred, AEP suggested, shippers holding capacity would have a legitimate claim for compensation as their right to land gas had been removed through Transco issuing the TFA. If Transco had used the buy-back mechanism, shippers may have been able to trade surplus capacity at the prevailing market price.

Innogy argued that Users need confidence that TFAs are not being used as an alternative to buying back firm capacity rights. As the regime evolves, it suggested, it may be appropriate for Transco to face similar commercial incentives for using TFAs as it does for utilising other constraint management tools.

Transco response

Transco would emphasise that the use of TFAs is usually accompanied by the appropriate commercial action, including entry capacity buy-back, in order to revise the quantity of entry capacity available to a level commensurate with the revised delivery quantities Transco can accept. Transco would not expect to take commercial action only in the circumstances of post-2 am TFAs and temporary TFAs (where end of day quantities are unlikely to be affected) .

Transco would also note that the use of TFAs is for operational purposes, in order to maintain safe operating pressures in the system, and therefore should not be seen as an alternative to the buy-back mechanism but rather as a complimentary mechanism that, with the support of the DFOs, enables safe system management. The use of TFAs would only be considered where the capacity management tools have not delivered the necessary reduction in entry flow rates. It therefore believes that the introduction of commercial incentives for actions that are taken to ensure system safety and security would be inappropriate.

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

No such requirement exists in respect of the Modification Proposal.

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

No such requirement exists in respect of the Modification Proposal.

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

As no changes to Transco's UK Link system are envisaged, a programme of works has not been completed.

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

The development of an implementation timetable is subject to the Ofgem decision on the Proposal.

16. Recommendation concerning the implementation of the Modification Proposal

Transco does not support implementation of the Proposal.

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 not to modify the Network Code and Transco now seeks agreement from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

Signed for and on behalf of Transco.

Signature:

Tim Davis
Head of Regulation NT&T

Date: