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Dear Colleague,

Network Code Modification Proposal 0593 'Obligation on Transco to publish TFA data'

Ofgem has considered the issues raised in network code modification proposal 0593 '*Obligation on Transco to publish TFA data*'. Having regard to its statutory duties, Transco's obligations under its Gas Transporter (GT) licence and all relevant facts, Ofgem has decided to direct Transco not to implement this proposal.

This letter outlines the background to the modification proposal and gives the reasons for the decision.

Background

On 24 October 2002, AEP Energy Services Ltd ('AEP') raised modification proposal 0593. Transco's consultation ended in January 2003 and its final modification report was received by Ofgem on 30 January 2003.

On the basis that this modification proposal had implications for offshore operations and in order to reflect discussions between Ofgem and the Department of Trade and Industry (DTI) on the issue of offshore information release, Ofgem published its initial views with respect to this proposal and initiated a second consultation on 29 August 2003¹. As part of this second consultation, Ofgem sought evidence from interested parties on whether and to what extent this modification proposal would lead to breaches of confidentiality agreements or clauses within Network Entry Agreements (NEAs) or other connection agreements. The second consultation ended on 22 September 2003.

¹ '*Modification proposal 0593 'Obligation on Transco to publish TFA data'- Ofgem proposed decision*', Ofgem open letter, 29 August 2003.

In its 29 August 2003 letter, Ofgem expressed its initial view that the modification proposal, by adding an additional level of transparency to Transco's activities as system operator, was likely to better facilitate both Transco's economic and efficient operation of the network and competition between relevant shippers and relevant suppliers.

Terminal flow advices

Terminal flow advices (TFAs) are notices issued by Transco requiring a delivery facility operator (DFO) to limit or stop terminal deliveries at a specified aggregated system entry point (ASEP) on the NTS. DFOs are responsible for operating the facilities that deliver gas to NTS entry points and other locations.

There are two types of TFA: gas quality-related TFAs and capacity-related TFAs. Gas quality TFAs may be issued because the quality of gas entering the NTS at a particular ASEP is outside of Transco's network entry specifications. In these circumstances, Transco is entitled to reject such gas.

Capacity TFAs can be issued within day as a result of network maintenance processes or capacity constraints. Under its System Management Principles Statement, Transco states that it may issue a TFA where its normal entry capacity management tools (e.g. firm entry capacity buybacks) have not reduced capacity to levels that the system can accommodate, or these tools are unavailable. As a result of a capacity TFA, a shipper may not be able to input the full quantities of gas associated with its holdings of firm entry capacity.

Transco has entered into a series of network entry arrangements (NEAs) and legacy agreements that set out the contractual framework for co-ordinating its TFA and other operating procedures with DFOs, terminal or sub-terminal operators and offshore gas producers.

Access to offshore information

In mid 2003, the DTI initiated discussions to put in place an arrangement for the voluntary disclosure of information from the offshore community to Transco and other market participants. In the light of this, Ofgem has worked closely with DTI, UK Offshore Operators Association (UKOOA) and Transco to facilitate the disclosure of offshore information to Transco and the market. It was agreed during these discussions that information disclosure would be developed and implemented in a phased approach.

On 11 November 2003, a voluntary agreement was put in place on the first phase of the offshore information project. Phase one entailed the provision of improved and standardised information to Transco on gas flows, and planned and unplanned outages. It was also agreed that in the event of a potential gas emergency, Transco will request that the DTI obtain maximum deliverability information from offshore participants on Transco's behalf.

As part of the negotiations for the second and third phases, UKOOA raised concerns in relation to paragraph 5 of amended standard condition 4E (condition 4E (5)) of Transco's GT licence.

Condition 4E (5) requires Transco to comply with any obligations in its network code to disclose information relating to (a) the operation of the licensee's pipe-line system; or (b) any market

relating to the licensee's pipe-line system. Modification proposal 0593 would fall under this licence condition.

UKOOA sought assurances from Ofgem that information provided to Transco on a confidential basis would not be disclosed to the market. In particular, UKOOA was concerned that shippers and designated third parties could raise a network code modification proposal to disclose commercially confidential information that had been provided to Transco.

To alleviate these concerns, Ofgem wrote an open letter on 23 October 2003² to the industry, providing some guidance as to how it might approach modification proposals relating to condition 4E (5) of Transco's licence. In this letter, Ofgem stated that a proposal which required Transco to disclose information which was provided to it on a confidential basis was unlikely to better facilitate the achievement of the relevant objectives if it could be demonstrated that acceptance of such a proposal threatened the continued provision of such information to Transco or if it placed Transco in breach of pre-existing confidentiality obligations.

Notwithstanding the guidance provided by Ofgem in this letter, UKOOA retained some concerns in relation to condition 4E (5) of Transco's GT licence. In response to these further concerns, the Authority granted a temporary informal derogation to condition 4E (5) of Transco's GT licence on 15 April 2004. This informal derogation, which is due to expire on 31 October 2004, is specific to field information collected by Transco for the purposes of producing its long term plan and forecasts which are published in its Ten Year Statement 'Transporting Britain's Energy' (TBE).

In the decision letter granting the derogation³, Ofgem also indicated that it expected to begin a formal consultation to amend condition 4E (5) of Transco's GT licence. Ofgem intends to start this consultation in the next few weeks.

Following the informal temporary derogation, Transco and UKOOA agreed on phase two of the offshore information disclosure project. Phase two provided for the release of operational and planning information which Transco uses to produce its TBE forecasts. For this year's forecasting process, Transco has received all the information it needs to develop its long term planning.

Phase three, which proposes the disclosure of aggregated information to all market participants, has also been agreed. This information includes:

- national and zonal near to real time flows onto the NTS;
- national and zonal ahead of and during day forecast flows onto the NTS;
- national and zonal forecast deliverability reflecting planned maintenance; and
- after the day flows into the NTS by sub terminal (this information is already available to gas shippers).

With respect to the first three information sources, the published data will be aggregated on a North / South basis. Transco considers that this preserves the confidentiality of information on

² 'The Disclosure of Offshore Information', Ofgem open letter, 23 October 2003.

³ 'Access to offshore information: Derogation to paragraph 5 of Amended standard condition 4E of Transco's Gas Transporter's licence', Ofgem decision letter, 15 April 2004.

individual gas flows. With respect to after the day flows, since these are already available to shippers at a sub-terminal level, it is proposed that the same level of disaggregation is retained. It is expected that the release of this information will start from October 2004.

The proposal

Network code modification proposal 0593 would require Transco to publish specific information for each type of TFA. In relation to gas quality TFAs, Transco would be required to publish:

- a brief description of why it was necessary to issue the TFA (i.e. what characteristic of the gas being delivered was not within network code entry specifications);
- details of the time that the TFA was put in place;
- TFA duration; and
- specific details of the entry flow restrictions that applied whilst the TFA was in place.

In relation to capacity TFAs, Transco would be obliged to 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);
- details of the time that the TFA was put in place;
- TFA duration; and
- specific details of the entry flow restrictions that applied while the TFA was in place.

Transco would be required to publish this information for all TFAs issued since 1 October 2002. For future TFAs the information would be published the day after the gas day for which the TFA was issued.

Respondents' views

First consultation by Transco

There were 11 responses to the initial consultation. While some respondents expressed support for the proposal, the majority opposed its implementation. Some of those respondents who opposed the proposal as a whole supported the component of the proposal related to capacity TFAs.

The main reason given for supporting the proposal was the increased transparency on Transco's actions and gas quality related events that it would provide. According to respondents, this increased transparency would assist shippers in managing capacity price risk, help develop the secondary market, and improve market confidence in Transco's actions.

Respondents who opposed the modification proposal stated that:

- it would breach confidentiality clauses in NEAs, where gas quality requirements are specified;
- it could lead to the release of market sensitive information which could adversely affect the commercial position of shippers and other market participants;

- it could generate new liabilities to the extent that erroneous or misleading information were to be published; and
- it was Ofgem's role (rather than market participants') to monitor Transco's use of TFAs and to collect detailed information on TFAs.

Further details on the responses to Transco's consultation can be found in Ofgem's open letter of 29 August 2003 on Ofgem's website at www.ofgem.gov.uk.

Second consultation by Ofgem

In its August 2003 letter, Ofgem initiated a second consultation and sought evidence from interested parties on whether and to what extent this modification proposal would lead to breaches of confidentiality agreements or clauses within NEAs or other connection agreements.

Ofgem received 7 responses to its letter. Only one respondent supported implementation of the proposal on the basis that it would increase transparency in the market and assist participants in understanding Transco's activities. Another respondent stated that Ofgem should reject this proposal with a recommendation that an alternative modification proposal be raised for the release of detailed information on the capacity TFAs only.

The respondents opposing the proposal reiterated the concerns already expressed in response to the initial consultation. In addition, a number of respondents highlighted that this modification proposal should be addressed in the light of the broader debate on the release of additional information on offshore activities. One of these respondents stated that this proposal has implications for the information flows exercise on which DTI and Ofgem have been working.

This respondent also stated that Ofgem has a key role in providing reassurance about maintaining confidentiality as part of the offshore information release project. It also commented that this modification may result in the offshore sector losing confidence in Ofgem and DTI's reassurance to protect commercially confidential information.

Although a number of respondents expressed concerns about the inconsistency of the proposal with confidentiality obligations within existing contracts, none of the respondents to the open letter provided evidence of such contracts. Some of these respondents stated that they were not in a position, or did not consider it appropriate, to provide evidence of any relevant confidentiality clauses to Ofgem.

One respondent added that Transco would not be entitled to provide to Ofgem details of confidentiality provisions within certain gas sales agreements that existed at the time of the introduction of the network code. Further, another respondent stated that confidentiality concerns relate to agreements that fall under the jurisdiction of the DTI.

Transco's view

Transco did not consider that the implementation of this modification would further the relevant objectives of its network code. Transco's main reasons for opposing the modification proposal were the following:

- the proposal could place Transco in breach of its confidentiality provisions under the relevant entry agreements with the DFOs; and
- the proposal could increase the contractual risk between producers and shippers.

Transco noted that currently it notified shippers of the occurrence of a TFA and the affected entry terminal via the shipper information service. In its final modification report, Transco stated that it could enhance the information already provided by specifying the nature of the TFA. When the TFA is capacity related, Transco considered that it could be able to provide more details on flow quantities.

Transco provided to Ofgem copies of confidentiality clauses and associated contractual terms contained in four Storage and Connection Agreements (SCA) and the Interconnector Agreement for the Bacton Interconnector.

Ofgem's view

As outlined in our letter of 29 August 2003, Ofgem considers that the publication of further detailed information on TFAs could, in principle, provide additional transparency and competitive benefits. Ofgem is also of the view that there should be a greater expectation of transparency with respect to Transco's activities given its role as monopoly system operator.

However, in assessing this proposal, Ofgem has also considered the potential adverse impact its implementation might have on the voluntary agreement for the disclosure of offshore information.

Impact on the release of offshore information

Ofgem recognises the concerns of the producers and the DTI that the agreement on the voluntary release of offshore information might be adversely affected by approval of this particular modification. Ofgem has taken an active role in promoting the successful progress of the discussions for the release of information about offshore activities. Although Ofgem has previously expressed a preference for a legislative solution, it has also assisted Transco and UKOOA in developing a voluntary agreement on the release of offshore information.

As part of its contribution into the development of this voluntary agreement, on 23 October 2003, Ofgem published an open letter, setting out some guidance as to how it might approach modification proposals falling under condition 4E (5) of Transco's GT licence. We consider that this letter has played an important role in providing reassurance that commercially sensitive and confidential information would be protected as part of the offshore information agreement.

In this letter, Ofgem indicated that it would be unlikely to approve modification proposals which required Transco to disclose information which was provided to it on a confidential basis, if it could be demonstrated that acceptance of such proposal threatened the continued provision of such information to Transco or if it placed Transco in breach of pre-existing confidentiality obligations.

The present modification proposal could fall under this category and so its approval could weaken one of the bases of the voluntary agreement on the release of offshore information.

In particular, both Transco and respondents to the two consultations have repeatedly stated that implementation of this proposal would cause a breach of confidentiality clauses in NEAs where gas quality requirements are specified and it could lead to the release of commercially sensitive information. From examining the contracts that Transco was able to provide to Ofgem, it appears that this proposal may place Transco in breach of confidentiality clauses included in the current form of the SCA agreements. At present, the standard form of the SCA agreements has not been approved by Ofgem and we would expect to return to this particular issue as part of any decision to approve the standard form of these agreements.

Although Ofgem has not received further evidence to substantiate respondents' claims, the parties who were bound by confidentiality provisions may not have been in a position to disclose confidentiality clauses on a voluntary basis. Given the producers' reluctance to provide information on this point, we are not in a position to come to a conclusion as to whether the proposal would, or would not, put Transco in breach of confidentiality clauses with respect to entry agreements.

Based on the consultation and the discussions with UKOOA, Transco and DTI about offshore information, Ofgem is however concerned that implementation of this modification proposal could adversely affect the success of the voluntary disclosure of offshore information by weakening Ofgem's reassurance in its letter of 23 October 2003 that it will endeavour to protect commercially sensitive and confidential information.

As previously stated, Ofgem considers that the release of reliable information on offshore activities is critical for the efficient operation of both the wholesale markets and Transco's transmission system. Further, we consider that improving the flow of offshore information to Transco in its role as system operator should enhance security of supply.

The offshore information release project has successfully progressed in the recent months and Transco has been receiving the information it needs to operate its system in an efficient and economic manner. Agreement on the last phase of the project (the publication of information to the market) has also been achieved. It is expected to provide the wholesale gas market with a level of transparency about offshore activities that will enhance competition.

Ofgem considers that the costs of disrupting the voluntary agreement on the release of offshore information would outweigh the potential benefits associated with the proposal.

Additional costs associated to this proposal

If this modification proposal were implemented, some existing bilateral agreements which are external or ancillary to the network code would need to be renegotiated, particularly with respect to confidentiality issues. In addition, Transco may be required to seek confidentiality waivers from all delivery facility operators.

This process would be time-consuming, might be costly for the parties involved and could bear the risk that not all required consents and renegotiations would be secured. As a consequence of the latter, Transco may become involved in litigation and contractual disputes.

Further, Transco has been relying on offshore information provided on a voluntary basis (especially with respect to expected gas flows and TBE data) to carry on its daily operations of

the system as well as its long term planning. To the extent that approval of this proposal would create some regulatory uncertainty as discussed above, offshore representatives may consider withholding this critical information, thus compromising Transco's economic, efficient and safe operation of the gas transmission system.

Way forward

Currently, Transco notifies shippers of the occurrence of a TFA, and the entry terminal to which it applied, on the following day. This information is provided via the Operational Summary on the Shipper Information Service.

In both its final modification report and in further discussions with Ofgem, Transco has expressed its willingness to publish, on a voluntary basis, additional and specific information about TFAs. This could include information about the nature of TFAs (i.e. gas quality related or capacity related) and, in respect of the less contentious capacity TFAs, details of flow quantities.

Ofgem welcomes Transco's proposal, which addresses the concerns that respondents have expressed in relation to the publication of gas quality TFAs. Ofgem looks forward to rapid progress in the implementation of this proposal.

Ofgem's decision

Having considered Transco's obligations under the GT licence and the Gas and Electricity Markets Authority's statutory duties, Ofgem has decided to direct Transco not to implement network code modification 0593. While Ofgem still considers that the publication of further information on TFAs could, in principle, provide additional transparency and competitive benefits, Ofgem's view is that the current proposal would not better facilitate Transco's relevant objectives as set out under standard condition 9 of Transco's GT licence.

In particular, given its potential adverse impact on the voluntary agreement for the disclosure of offshore information and the views of Ofgem expressed in the letter of 23 October 2003, we do not consider that approval of this modification proposal would better facilitate the efficient and economic operation by the licensee of its pipeline system and the securing of effective competition between relevant shippers and relevant suppliers.

If you have any queries in relation to the issues raised in this letter, please do not hesitate to contact Samanta Padalino (Senior Manager, Networks, 020 7901 7033).

Yours sincerely,



David Gray
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