TRANSCO NETWORK CODE MODIFICATION PROPOSAL No. 0679

"Formally include the Network Code Modification Rules within the Network Code"
Version 2.0

Date: 09/12/2003

Proposed Implementation Date:

Urgency: Non-Urgent

Justification

Well managed governance processes are rightly regarded as key to delivering effective and necessary change that impacts every area, in this context, of the Network Code. The present justification for not including the modification rules within the Network Code is unclear and we note is not consistent with the approach adopted in electricity where the modification rules have been included within the BSC.

Standard Condition 9 of the Gas Transporters Licence places an obligation on transporters to establish and operate a set of procedures (the Modification Rules). Paragraph 6(b) prevents the transporter from changing the Modification Rules without first consulting shippers and then obtaining the consent of the Authority. This does not amount to a prohibition upon relevant shippers proposing change but appears to have been interpreted as such by Transco, furthermore, this proposal is entirely consistent with the requirements of this Condition. We believe that in this respect Transco may be open to accusations of acting in a discriminatory way by not permitting counterparties to propose changes in the governance arrangements.

Nature of Proposal

Modify the Network Code such that the Modification Rules, as currently published by Transco, are incorporated into and constitute part of the Network Code and hence are subject to the same change governance processes.

It is proposed that the Modification Rules be incorporated as a Supplement to Section V General and immediately prior to or immediately upon incorporation within the Network Code remove Section 1.4 from the Modification Rules.

Purpose of Proposal

This proposal is designed to provide an important step towards improving the transparency and accountability of the Network Code modification processes and to improving the Network Code governance arrangements. We consider this will partly be achieved by making them more compliant with the Principles of Governance published in Ofgem's "Gas Retail Governance – Further Consultation" document in June 2003.

In respect of the Relevant Objectives incorporation of the Modification Rules within the Network Code will enable relevant shippers to propose change to the rules which could be expected to;

1. improve the efficiency of the transportation arrangements and hence the operation of the system,
2. enable Transco to demonstrate fuller compliance with licence condition 4D para 1(a) by removing an apparently anomalous and unfair advantage which it currently enjoys, and,
3. facilitate proposals from a wider subset of the industry thus promoting better competition between shippers and between suppliers.

It should be noted this proposal envisages the continuation of the present governance process whereby proposals to modify the code (including proposals from Shippers to modify the code rules if this proposal is approved) will still require Ofgem's approval. It should also be noted that consistent with this proposal we remove Section 1.4 of the Modification Rules prior to or immediately upon incorporation within the Network Code.

Consequence of not making this change

Although Transco's stewardship of the process is generally quite good, conflicts of interest clearly do arise and this has sometimes lead to less than satisfactory behaviour from Transco. The following criticisms have often been raised:

- Transco effectively holds a power of veto in deliberations of the modification panel since all decisions need its vote.
- Transco is sole guardian of the modification rules and associated processes, since they are not contained within the Network Code.
- Transco is able to report the workstream discussions in a manner that may sometimes inadequately reflect the different views of the industry. It may also appear that on such occasions greater weight is given to its own objectives and preferences.
- Transco is able to exert undue influence upon the development of a proposal and can delay the implementation of those proposals it dislikes through careful management and application of the modification process.
- Transco not objectively reporting consultation responses in the final modification report with the final recommendation being influenced predominantly by its own views.
- Transco is able to modify the text or form of the final modification report without the requirement for it to re-consult prior to its submission to Ofgem for determination.
- Transco not including appropriate legal text for modification proposals it dislikes before they are submitted to Ofgem or the failure to procure such in reasonable timescales.

If this proposal is not implemented we believe that Transco will continue to possess an unfair advantage over the development of both Network Code modification processes and proposals, since Shippers will be excluded from formally proposing

changes to address some of the perceived defects in the current governance processes highlighted above.

Area of Network Code Concerned

All

Proposer's Representative

Sharif Islam (Total Gas and Power Limited)

Proposer

Sharif Islam (Total Gas and Power Limited)

Signature

.....