

Transco, Shippers and other
interested parties

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Dear Colleague,

Modification proposal 701, 'Requirement for Users to ensure non-domestic Supply Meter Installations are installed and maintained by accredited Meter Asset Managers'

Ofgem has carefully considered the issues raised in modification proposal 701 'Requirement for Users to ensure non-domestic Supply Meter Installations are installed and maintained by accredited Meter Asset Managers' and has decided not to direct Transco to implement the modification, as we do not believe that it will better facilitate the achievement of the relevant objectives of Transco's Network Code. In this letter we explain the background to the modification proposal and outline the reasons for reaching this decision.

Background to the proposal

Historically, meter works including the installation and maintenance of the meter were carried out by the relevant gas transporter, which in the vast majority of cases is Transco. However, metering is a contestable activity and both consumers and suppliers have increasingly been utilising their right to appoint alternative meter providers in order to achieve cost savings or improved standards of service. Given the potential benefits to consumers, Ofgem has encouraged the development of competition in this area.

In August 2000 Ofgem initiated the Review of Gas Metering Arrangements (RGMA) in order to address the remaining non-price barriers that were considered to be inhibiting the development of competition in gas metering services. Key amongst these was the integrated nature of Transco's monopoly transportation and metering businesses. The RGMA developed business processes and data flows (as specified in the RGMA baseline) which will underpin competition in metering and reflect Transco's separation of its transportation and metering business arms. The development of industry standards for business processes and data flows will allow market participants to communicate effectively in the evolving metering market. It is anticipated that the RGMA regime will come into effect on 12 July 2004.

In January 2002, the Technical Issues Sub-Group of the RGMA was established and tasked to consider the RGMA baseline from a technical perspective, rather than the largely commercial perspective that had driven its development to that point. This group confirmed that the baseline conforms to all appropriate technical and health & safety requirements. It also put forward proposals on how market participants would be able to conform to the roles and responsibilities expected of them in a changing competitive environment. It was felt that given the effective separation of roles and responsibilities between metering and gas transportation activities, the provision of gas meter installations under the RGMA may require the introduction of additional controls and procedures to ensure the provision of a safe and secure supply of gas to consumers and that the requirements of legislation continue to be met. To this end, the group developed a Code of Practice for Meter Asset Managers ("MAMCoP")

In June 2004 Ofgem issued a consultation document¹ and accompanying section 23 notices proposing various modifications to the gas supplier's, gas shipper's and gas transporter's licences, in facilitation of the RGMA. Amongst the proposed modifications is a requirement that domestic suppliers and gas transporters use MAMs who are compliant with MAMCOP. Given that, unlike domestic suppliers and gas transporters, industrial and commercial ("I&C") suppliers are under no licence obligation to provide metering services Ofgem did not include a similar proposal for I & C suppliers. The closing date for objections to those proposals is 7 July 2004.

¹ Competition in the Provision of Gas Metering Services: Licence Amendments Decision Document & Section 23 Notices June 2004

The modification proposal

On 8 June 2004 Transco submitted a modification proposal to Ofgem and requested that it be granted urgent status. This modification seeks to impose upon I&C shippers' the requirement that they should only contract with those suppliers who in turn contract with a metering agent that is registered as compliant with the MAMCoP.

Transco is of the view that the matter must be resolved imminently as the decision to cut-over to the new RGMA processes was taken at the IMSIF industry meeting on 25 June 2004. Transco believes that it is unacceptable for the matter to remain unresolved post RGMA 'cutover'. Ofgem agreed to Transco's request to grant urgent status to this modification on 10 June 2004, after considering the criteria² it generally applies to such requests.

Respondents' views

Transco received 11 representations in response to this modification proposal, 8 of which were opposed to its implementation. The 3 respondents who supported its implementation are domestic shipper/suppliers.

Whilst several of those objecting to the proposal offered general support for the intent to maintain safety standards, they had specific concerns with the manner the Transco was seeking to resolve any perceived issues. There were common themes to respondents' views, which have been summarised below.

Timing

Four respondents commented upon the timing of the modification proposal, being as close as it was to the go/no go decision of 25 June 2004. Two respondents noted that the perceived risk that Transco is trying to mitigate is already present, and has been since the introduction of the current regulatory regime. In particular, they took the view that the implementation of RGMA should not be confused with

² See www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2752_Urgency%20Criteria.pdf

the onset of competition, which is already in existence. The respondent feels that if Transco does not consider the current regime as sufficient to mitigate the risk in the industry, this should have been addressed earlier rather than use what it considered to be a crude answer involving shippers. A further two respondents expressed concern at this proposal being raised in the final stages of the development of RGMA.

Two respondents emphasised that the implementation or otherwise of this modification proposal should not prejudice the effective date of RGMA implementation.

One respondent raised concern that the proposed enduring accreditation scheme will not be in place in time for the implementation of this proposal, leaving shippers unable to discharge the new obligations.

Need

Several respondents, whilst opposing the implementation of this modification proposal, support the intent behind the MAMCoP and suggest that they will be seeking to use accredited service providers. However, respondents also emphasise that the appointment of such MAM's should be on the same voluntary basis as providing the service itself. It is noted by several respondents that a change is due to be made to the Gas Forum's Industrial & Commercial Code of Practice ("ICoP") which will introduce an obligation upon I&C suppliers to use a MAM that is compliant with the MAMCoP, though the ICoP is itself a voluntary agreement.

Four respondents stated that in their view this modification proposal was inconsistent with several other proposals that are currently with Ofgem for a decision, which seek to separate metering provisions from the Network Code.

Effect

One respondent stated that as the clauses introduced by this modification will only apply to non-domestic suppliers, it could potentially discriminate between categories of user. Another respondent commented that the modification proposal appears to go beyond what has already been agreed through industry debate to be necessary to include within MAMCoP.

Several respondents consider that the implementation of the modification would effectively extend the scope of regulation. One respondent notes that *“in making its decision the Authority will need to consider whether it has the vires to extend regulation through this means”*. Another suggested that *“should Ofgem direct Transco to implement this modification proposal they would be unable to prevent themselves from being open to challenge on their decision”*.

Transco's view

Transco, as the proposer of this modification, supports its implementation. Its responses to the views of respondents are set out below.

Timing

Transco remains of the view that this modification proposal should be implemented prior to the cutover to the new RGMA processes. It notes that it has already experienced problems with meter workers not seeking approval from it (to set and seal the meter regulator) prior to carrying out meter works.

Need

Transco welcomes the recognition of respondents to the importance of the MAMCoP, but does not consider that the introduction of voluntary provisions will satisfy the recommendations of IGEM³ that the MAMCoP should be made mandatory by law. Transco also has concerns that not all I&C suppliers are signatories to the ICoP.

Transco's response to views given with respect to the Ofgem Approved Meter Installer (“OAMI”) (details below) accreditation is that it is limited to the installation of meters, whereas the MAMCoP refers to the whole life of the meter. Focusing on its concerns with respect to gas pressure, it comments that the OAMI Codes of Practice 1a and 1b do not require approval to be sought from the gas transporter to set and seal the regulator.

³ The Institution of Gas Engineers & Managers

Effect

Transco acknowledges that additional obligations appear to exist within its legal text when compared with the domestic market. Transco believes that these are necessary for its proposal to be as effective as would have been the case if the requirement for MAM accreditation was mandatory in law. Transco's view is that an appropriate level of sanction must exist for the provisions to have effect. It goes on to note that the requirement that remedial work would be necessary at a meter installation is only to the extent required for it to meet its legislative obligations, not the full requirements of the MAMCoP.

Transco does not believe that Ofgem's acceptance of this modification would be an extension of regulation as it further clarifies existing shipper obligations contained within Section M2.1 of the Network Code.

Ofgem's view

This modification proposal clearly represents a complicated area and has raised a number of important issues.

Timing

Whilst Ofgem shares the views of those respondents that raise concern at such a proposal being raised at this late stage in the development of RGMA, this does not in itself make the proposal inappropriate. Matters must be addressed as and when they arise and cannot always be reasonably foreseen.

Transco takes the view that it had not raised this modification proposal earlier as it had made an assumption that the proposed licence modifications to mandate the MAMCoP would apply to both domestic and non-domestic suppliers. Throughout its consultations⁴ Ofgem has specifically referred to a possible modification to Standard

⁴ Competition in gas metering services: proposed Licence Amendments, Ofgem, December 2003; Competition in gas metering services: proposed Licence Amendments: Final Proposals,

Licence Condition 34 'Metering Arrangements for *Domestic* Customers' as the means of mandating gas suppliers (and their agents) compliance with the MAMCoP.

Ofgem is aware of the need for as much certainty as practicable over the RGMA implementation date and the possible financial implications to all parties of any potential further slippage. Ofgem agrees with those respondents who stated that the outcome of this modification proposal should not have an impact upon the RGMA go live date, and notes that in its Final Modification Report Transco concurs with this view.

Ofgem is currently conducting a procurement exercise to engage an agent to carry out the MAMCoP registration function. It is anticipated that this contract may be in place by February 2005. In the meantime, Ofgem has established interim arrangements to ensure that MAMs will be able to self certify that they are complying with the MAMCoP.

Need

Transco has stated that it considers this modification to be necessary in order allay its concerns over its legislative obligations, and that doing so would be consistent with facilitating the efficient and economic operation of its pipe-line system (network). For the purposes of its safety obligations, the end of Transco's network is the outlet of the emergency control valve at the end of the service pipe⁵. However, as a gas transporter, Transco is obligated under the Gas Safety (Management) Regulations 1996 to ensure that the content and characteristics of the gas it conveys conforms to certain requirements⁶. In particular, the regulations require that the gas shall be at a suitable pressure to ensure the safe operation of any gas appliance which a consumer could reasonably be expected to operate.

The Gas Safety (Installation and Use) Regulations 1998, stipulate that no person shall install a primary meter unless there is a regulator controlling the pressure of gas supplied through the meter. The regulations also require that any person who installs a regulator for controlling the pressure of gas shall immediately thereafter

Ofgem, April 2004; and Competition in the provision of gas metering services: Licence Amendments: Decision Document & Section 23 Notices, Ofgem, June 2004.

⁵ 'A guide to the Gas Safety (Management) Regulations', paragraph 10, published by Health and Safety Executive Books

⁶ Gas Safety (Management) Regulations: Regulation 8 – and Part I of Schedule 3.

ensure that the regulator is adequately sealed. This seal is to prevent the regulator setting from being adjusted or interfered with without the breaking of the seal. Under the regulations, no person except the gas transporter or a person authorised to act on its behalf shall break the seal applied to the regulator. Nothing in the MAMCoP changes the requirement. Control of the regulator is therefore vested with the gas transporter regardless of who actually owns the equipment.

The Gas Safety (Installation and Use) Regulations 1998 state that no person shall carry out work on any gas fitting unless he is competent to do so. Currently, this is demonstrated by registration with the Council of Registered Gas Installers (CORGI). In addition, both domestic and non-domestic suppliers are obligated by standard conditions 34 and 7A of their licences respectively to ensure that any meter connections that are carried out either on behalf of it, or the consumers, are made by, or subsequently inspected by, an “authorised meter installer” approved by the Authority as possessing expertise satisfactorily to connect a meter so as to ensure that the gas supplied through it is duly registered. For these purposes Ofgem operates the OAMI scheme, which is administered by CORGI on Ofgem’s behalf.

Transco already operates a scheme for authorising OAMIs to set and seal the regulator, as set out in its document T/PR/GT2⁷. Furthermore, on 23 June 2004 directed Transco to implement modification proposal 672 ‘Amendments to facilitate the unbundling of Supply Meter ownership and associated works in accordance with the Review of Gas Metering Arrangements (RGMA)’, for which the legal text already amends Section M2.1 of the Network Code, specifying that; *“The design and specification of certain Supply Meter Installations (where required to be installed) will need to be agreed with Transco on a case by case basis in accordance with Transco T/PR/GT2 and comply with the relevant Ofgem Codes of Practice”*.

Given the above, Ofgem does not consider that Transco’s legislative obligations are different post-RGMA than they are currently. This is reinforced by the fact that the HSE and Transco have agreed at this stage, that there is no change necessary to its safety case⁸ as RGMA implementation is not seen as a material change. However, given the effective separation between metering and gas transportation activities

⁷ Procedure for obtaining authorisation for the setting and sealing of the meter regulator and any associated pressure control and protection device(s) associated with the gas supply meter installation.

⁸ A requirement of the Gas Safety (Management) Regulations 1996.

and the subsequent reliance upon inter-organization communications, Ofgem acknowledges that there could be benefit from the introduction of additional controls and procedures that further ensure the continued provision of a safe and secure supply of gas to consumers in an emerging competitive gas metering service market. This view is supported by the independent risk assessment undertaken by IGEM which emphasized the importance of ensuring industry-wide compliance with MAMCoP.

Ofgem notes that several of the respondents who oppose this modification proposal confirm their intent, of their own volition, to contract with services provided which are compliant with the MAMCoP. Ofgem welcomes such statements. However, whilst voluntary compliance would be in keeping with fact that I&C suppliers are not obligated to provide such services, and consistent with Ofgem's desire to limit, and where possible withdraw from, prescriptive regulation, it does not offer any degree of certainty. It would also fall short of the IGEM recommendation that MAMCoP should be binding in law.

Effect

Ofgem is mindful that technical standards, along with overly prescriptive governance arrangements or industry processes and procedures have the potential to create barriers to entry, as well as increase costs to participants, whether inadvertent or otherwise.

Ofgem remains of the view that matters relating to the competence of meter installers are more appropriately captured within, and mandated by, relative safety legislation. As ever any party conducting meter work or appointing others to conduct work on their behalf will therefore need to fully familiarise themselves with the appropriate legislation directly and ensure they are compliant with its requirements. Nevertheless, Ofgem also acknowledge that there may be benefits from the industry as a whole operating to the same technical standards, as provided by the MAMCoP.

However, Ofgem considers that as drafted, implementation of this modification would have negative effects that outweigh those benefits. In reaching this view, Ofgem notes in particular that:-

- Transco does not intend this modification proposal to extend to consumer owned meters and has amended the accompanying legal text accordingly;
- the accompanying legal text for this modification refers to potential remedial action being prompted not only where Transco becomes aware that a meter has been installed by a party other than an accredited MAM, but where at any time subsequently it is not been maintained by such a MAM. Ofgem considers that this may place undue restriction on the commercial decisions of I&C suppliers, which may prefer to contract with service providers on a job by job basis, possibly carrying out site visits for periodic maintenance in line with the manufacturer's recommendations, rather than having a standing maintenance contract for each meter;
- the modification as drafted does not appear to specifically support Transco's view that compliance with the MAMCOP will help underpin procedures which ensure that appropriate GT authorisations are sought by third parties when setting and sealing the pressure regulator and that MAMs will ensure that installations comply with the MAMCOP.

Ofgem's decision

For the reasons outlined above, Ofgem has decided not to consent to this modification, as we do not consider that it would better facilitates the achievement of the relevant objectives of the Transco Network Code, as outlined under Amended Standard Condition 9 of its GT licence.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Mark Baldock on 020 7901 7221.

Yours sincerely,

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