

Modification Report
Ability for User's to Vary their Modification Proposals
Modification Reference Number 0713
Version 2.0

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

The proposer states that proposal seeks;-

"To allow equal treatment for both Transco raised and User raised modification proposals."

The proposer provides the following draft legal text;-

"Section Y

Paragraph 2.1 Defined Terms

Amend definition of "User Proposal" as follows;

"User Proposal": any Modification Proposal made by a User pursuant to paragraph 6.1.2 which Proposal may be varied by such User pursuant to paragraph 11.4;

Amend paragraph 11.4 Variation of Modification Proposal as follows;

Transco will as it considers appropriate modify each Transco Proposal or User Proposal adopted by Transco (pursuant to paragraph 6.4) and a User will as it considers appropriate modify a User Proposal that it makes pursuant to paragraph 6.1.2 both having regard to better facilitating the achievement of the Relevant Objectives and having had regard to any other matter (including, but without limitation, representations (if any) received (in accordance with these Rules) from Users, Non-Code Parties, Third Party Participants and otherwise and the report of the relevant Workstream or Development Work Group and discussions at meetings of the Modification Panel) as appropriate."

2. Transco's Opinion

Transco recognises that the Modification Proposal seeks to introduce improvements to the prevailing Network Code Modification Rules. Transco welcomes such initiatives believing that the principles proposed may improve efficiency in the context of appropriating better developed and considered changes to the Network Code Modification process. However, Transco does not believe that the governance and Licence obligations required to support the proposed changes have been appropriately considered or, where relevant, sufficiently determined within the Modification Proposal or the representations received.

Transco notes that under the prevailing Network Code Modification processes a (User) proposer cannot amend a Proposal once it has been submitted to the Modification Panel. The (User) proposer is required to either withdraw the Proposal and re-submit, or request that Transco raise an alternate, within the

permitted five day window, of the original Proposal being raised. This places constraints on the flexibility and efficiency Modification process. On this basis Transco believes that the intent of this Modification Proposal to permit amendments to a User originated Proposal merits support. However, Transco also considers that the timing of such changes and the governance regarding the conditions which must be met before amending a Proposal needs further consideration and clarification before such a Proposal could be implemented to the benefit of all and in accordance with the 'code relevant objectives'.

Transco believes that, in order for a consultation process to be an effective means by which Network Code changes can be achieved, through debate and development with the community, it is essential that comments made within the consultation process are actively considered and, where the consensus of responses to a Proposal put forward changes which can be shown to better facilitate the Relevant Objectives, without materially changing the primary intent of the Proposal, then there should be a mechanism by which such changes can be to the Proposal.

Transco notes that currently it may amend a Transco Proposal following the 'close-out' of the consultation process. Transco rarely utilises this provision, but may initiate an amendment as a result of reviewing representations to a Proposal. A recent example of an occasion where Transco has exercised this provision was following the consultation to Modification Proposal 0702 'Partial Volume Interruption', where responses to the Proposal recognised that Network Sensitive Loads (NSL) should not be excluded from the scheme. After careful consideration Transco included NSLs within the scheme and changes to the legal drafting and processes were made. These changes were made following an assessment of the impact such a change may have on the industry, the system and the legal text, but above all whether they better facilitated the relevant objectives. Transco identified that this clearly improved the Proposal in relation to bettering the Relevant Objectives and did not materially effect the primary intent of the Proposal and as a result included the change within the Final modification Report (FMR) submitted to Ofgem.

Transco observes that it has a licence obligation to ensure that any changes to the Network Code demonstrate that they better facilitate the relevant objectives and therefore any changes to a Proposal must also demonstrate that these objectives are achieved. Transco notes that such obligations are not required of Users through their Licence, therefore Transco is concerned that empowering a Users to make such amendments post consultation undermines Transco's ability to ensure that it is operating in accordance with its licence obligations.

Although a number of respondents have inferred that amendments would not necessarily be great, Transco remains mindful that changes to a Proposal imply a requirement for Transco to review and amend originally drafted legal text, if provided, and system impact assessments, this may require an extension to timescales for the creation of the Modification report.

Transco notes that the Proposal does not specify that an amendment to a Proposal is made as a direct result of representations to a consultation, indeed some

representations received as part of the consultation on this Proposal indicated that they would not wish to define why and when such changes can be made.

Transco asserts that although it has sympathy with the view shared by some of the respondees to the Proposal, that equal treatment and flexibility should be afforded to all, this should not be undertaken in the absence of controls associated with the governance of such amendments post consultation. Transco remains unclear when such changes to a Proposal may be submitted, or how the process for, and governance of, such changes will be managed. Given that, at the FMR stage of the process, Transco is obligated under its licence to draft a report and in some instances provide legal text, any changes would have to be discussed with Transco and subsequently be included as part of the FMR submission to Ofgem. Transco would be required to assess whether any proposed changes would have any material effect on the initial impact assessment and legal text and therefore this may require an extension to FMR drafting timescales.

In conclusion Transco considers that the Proposal does not provide a process or any clear controls relating to the governance and management of post consultation amendments. In the absence of such controls, or clear agreement that the time period for Users to change their Proposals is limited to prior to the issue of the Draft Modification Report (DMR), Transco does not believe that it can support this Proposal as drafted as the introduction of this Proposal may conflict with Transco's obligations under its GT Licence.

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

Definition of Licence condition 4D

The proposer considers that the introduction of this Proposal would better facilitate the efficient operation of the Network Code governance processes and hence Transco's discharge of its licence condition 4D "Conduct of Transportation Business".

Definition of licence condition 4D paragraph 1. states " The licensee shall conduct its transportation business in the manner best calculated to secure that neither -

- (a) the licensee or any affiliate or related undertaking of the licensee, nor
- (b) any gas shipper or supplier,

obtain any unfair commercial advantage including, in particular, any such advantage form a preferential or discriminatory arrangement, being, in the case of such an advantage accruing to the licensee, one in connection with a business **other** than its transportation business."

Transco does not agree with the assertions of the proposer that the Proposal better facilitates Transco obligation in respect of licence condition 4 (d). Transco notes that in its Transportation Business role it already carries out its duties in a non discriminatory and non preferential manner in respect of gas shippers and gas suppliers. Transco notes that the licence provisions refer to obtaining any

commercial advantage "in connection with a business other than its transportation business". Transco does not consider that such a provision is relevant to this Modification Proposal.

In its decision letter to Modification Proposal 0679 - 'Formally Include the Network Code rules within the Network Code', Ofgem states that:-

"Ofgem notes that the Balancing & Settlement Code refers specifically to promoting efficiency in the implementation and administration of the balancing and settlement arrangements. However, in judging whether a change to the modification rules themselves would or would not be worthwhile it does not seem that an objective of this type adds any particular clarity. Ofgem holds the view that the current objectives as defined in Standard Condition 9 of the Gas Transporters Licence, in particular objective b), are adequate for judging the benefits of a modification proposal on rule changes, though Ofgem will continue to monitor the situation and give further consideration to the possibility of reviewing the Network Code objectives at a future date, if appropriate".

Transco does not believe that the Proposal as drafted better facilitates Standard Condition 9 (b) of the Gas Transporters Licence. Implementation of this Proposal would allow unconstrained changes to Users' Proposals without adequate recourse by the proposer to the relevant objectives or representations received. This may compromise Transco's obligations under its Licence to ensure that the Modification process ensures that any changes better facilitate the relevant objectives.

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

a) implications for the operation of the System:

No such implications have been identified.

b) development and capital cost and operating cost implications:

There may be some cost implications associated the provision of amended IS impact assessments and the redrafting of legal text.

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:

Transco believes it is appropriate to recover any costs incurred. To the extent that additional costs are incurred any such costs would be recovered through the internal costs incentive.

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

No such consequences have been identified.

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

It is not anticipated that there will be a change to the level of contractual risk to Transco as a consequence of this Proposal.

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

No development implications on the related computer systems of Users are anticipated.

7. The implications of implementing the Modification Proposal for Users

Users will be able to vary their Modification Proposals throughout the Modification process including during the preparation of the FMR.

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

No implications have been identified.

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 of this Proposal may compromise Transcos ability to carry out its regulatory obligations under its GT Licence.

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

Advantage

Users will be able to vary their Modification Proposals.

May provide a more responsive change process that permits changes in response to view express during consultation

Disadvantage

A possible disadvantage could be that the presently provided draft legal text in support of this Proposal would allow unconstrained changes to Users' Proposals without adequate recourse by the proposer to the relevant objectives or representations received and therefore may compromise Transco obligations under its Licence to ensure that the Modification process ensures that any changes better facilitate the relevant objectives

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

Twelve representations to the Proposal were received.

BP Gas Ltd	BP
E.ON UK Plc	E.ON
EDF Energy PLC	EDF
Association of Energy Producers	AEP
Scottish & Southern Energy Plc	SSE
British Gas Trading Ltd, Statoil (UK) Ltd	BGT
RWE Npower Plc	RWE
Total Gas & Power Limited	TGP
Shell Gas Direct	SGD
Statoil (UK) Ltd	STA
GemServ	GMS
The Gas Forum	GFO

Eleven respondents expressed support for the Proposal.
One (GMS) provided comments.

- General:** AEP stated that it, "would like to record its support for these proposals [Modification Proposals 0712: 'Additional Information in Modification Proposals', 0713: 'Ability for Users to Vary their Modification Proposals', 0714: 'Use of Principles of Governance in Applying Section Y of the Network Code' and 0715: 'Modification Panel Approval of the treatment of Representations in Final Modification Reports'] since they will address current anomalies, provide for greater transparency of process and lead to more efficient and effective modification arrangements." BGT agreed that the Proposals constituted, "a revised method, which instils greater transparency, consistency, efficiency". TGP concurred by agreeing that, "If the governance process can be improved then this will result in increased transparency and efficiency". RWE stated that it, "fully support any modification that looks to improve efficiency to the existing process."

Transco response

Transco fully supports the Proposal's principle that permitting amendments to a Proposal upto the issuing, for consultation, of the Draft Modification Report (DMR), may go some way to improving the efficiency and effectiveness of the Modification process. However, Transco does not see how such a change would increase transparency particularly in respect of changes later in the Modification process, post consultation, where the amendment of a Proposal may hinder improvements to transparency if they were initiated in the absence of prior notice to the community and not as a consequence of representations.

- Gas Forum Members Developments:** BGT commented that, "The Gas Forum had established a group to review the operation and potential for improvement of the Network Code Modification process." TGP supported

this stating its active participation within, "The group of Gas Forum members who have worked together to develop improvements to the governance arrangements for the Network Code Modification process." Formally GFO responded noting that it was, "keen to see improvements to the formal Network Code governance regime implemented" and that, "These proposals would improve the governance regime by introducing greater transparency and equality the Forum supports their implementation without delay."

SGD supported the implementation of the proposals and acknowledged "that Transco's stewardship of the process to date has been largely satisfactory." Also commenting that "prospective changes to the gas environment and in light of experience with Code processes to date, we consider it fitting for changes to be made at this time."

Transco response

Transco acknowledges the Gas Forum discussions regarding the development of improvements to Network Code Governance Rules. Transco notes that this has not been developed within a formal Network Code Workstream.

- **Transco seeking further views for clarity** – Shell, BGT, GFO and E.ON noted that they were 'disappointed' over Transco requests for further views. They were, "disappointed that Transco hasn't embraced the proposed changes to governance process." SGD expressed concern that while Transco was supportive of the intent of these of these Proposals it, "Has not been able to provide its full support. We hope that Transco will be able to recommend the implementation of all of these proposals [Modification Proposals 0712: 'Additional Information in Modification Proposals', 0713: 'Ability for Users to Vary their Modification Proposals', 0714: 'Use of Principles of Governance in Applying Section Y of the Network Code' and 0715: 'Modification Panel Approval of the treatment of Representations in Final Modification Reports'] when it submits its final modification report." E.ON stated that, "It is encouraging to see that Transco supports the intent of all of the above modification proposals. However, we are concerned that Transco are not acting in good faith in the principles of good governance in presenting so many obstacles to changes, which in comparison to the benefits of the proposals to the whole of the industry, have little to no weight." The GFO stated it was, "Pleased to note that Transco supports the intent of each of the proposals yet it is disappointing that, despite this support, Transco does not at this stage find itself able to recommend implementation. Each of the Proposals is designed to make the regime more robust and unbiased and as such should be non-contentious".

Transco Response

As Transco has previously stated it is fully supportive of any initiative which improves the governance process, however it is obliged through its Licence to ensure that any change to the Network Code is implementable from a legal, system and operational perspective. Transco notes that the purpose of Workstream development and the Modification process is to ensure that Proposals are appropriately considered and defined, by the industry, with the intent that they may be implementable in the absence of ambiguity. In

evaluating this Proposal Transco identified a number of issues which required further clarity in order that it could carry out its obligations, and as such included these as part of the consultation. Transco is disappointed that some respondees have viewed this as being obstructive as it considers that such questions provided greater clarity to the intent of the Proposal and clearly demonstrated Transco's commitment to its Licence obligations, Amended Standard Condition 9.4 and 9.5.

- **Clarity on Change process proposed when can proposal be changed:** EDF, SSE, GMS, TGP and E.ON considered that proposers should be permitted to amend their Proposal upto and including the FMR stage as this would establish parity with procedures associated with Transco raised Proposals.

SSE considered "it would be more efficient for a User proposal to be varied, provided such amendments are clearly identified. We suggest that variations to the proposal should be able to be made up to and including the Final Modification Report stage". EDF supported the legal text put forward by the proposer and clarified that, "the intent of 0713 is to allow the same procedure to be followed for Users Proposals and Transco Proposals. We believe that discussions of limiting the possibility to amend both sets of proposals should be raised under a new modification proposal. It would be preferable that no changes are made after the production of the Final Modification Report, however, every situation must be treated on a case by case basis."

E.ON concurred with SSE's view that, "It was appropriate to afford Users' Modification Proposals the same treatment as Transco Proposals. There have been many instances since the inception of Code where, because of this anomaly, User Proposals, that have been sent to development/consultation by the Panel cannot be amended in response to comments made. This means that either the User has to withdraw that proposal and raise another, or ask that Transco put forward an alternate."

E.ON stated that "Under this proposal, both Transco and users would be able to modify a proposal, as they consider appropriate. This would introduce more flexibility and equality within the Code.' TGP and GMS concurred with the view that 'This Proposal simply establishes parity".

SGD, commented it, "would suggest that a Proposer should be able to modify their own proposal up to the time that a draft modification report is circulated."

Transco response

Transco notes that under current arrangements where Transco effects change to its Proposals, post consultation, such changes are carried out as a result of reviewing representation to the consultation and under the governance of its licence obligations. The Proposal is seeking to achieve parity between Users and Transco, however parity in Licence obligations and governance are not reflected. The Proposal does not put forward means by which such changes may be controlled, and does not provide any details as to what extent an amendment may be added, or when the amendment changes the Proposal to such an extent that a new Modification Proposal is required.

Currently Transco cannot effect changes to a Shipper Modification Proposal post consultation. Transco recognises that changes to these provisions merit further consideration in order that the consensus of representation in certain circumstances may be acted upon in respect of amendments to the original Proposal. Transco agree that this may provide a more effective and flexible Modification process. However Transco would reiterate that any such Proposal would need to be mindful of the controls required in respect of the means by which such changes are controlled and governed.

Transco agree with SGD comments that permitting the proposer to make changes to its Proposal prior to the DMR would provide a more effective, efficient and flexible Modification process. Transco further suggest that it might be appropriate and beneficial to allow Transco to change User Proposals post the consultation period provided that such changes meet the same criteria as are applied to existing changes to Transco proposals. Transco believes this is appropriate, where as User changes are not, because Transco is obliged to consider its Licence obligations, in relation to the governance of the Modification process, when making such changes.

- **Amending Proposal in response to representations :** TGP proffered the view that it recognised, "that there is a possible disadvantage in allowing unconstrained changes to Proposals without recourse by the Proposer to the relevant objectives or representations received.' But TGP also contend that 'This Proposal does not seek to introduce this.'

SSE suggested that, "Variations to the Proposal should be able to be made up to and including the Final Modification Report stage. This would enable Transco to vary a User Proposal taking account of representations, something that it is unable to do under the current rules. If the User doesn't agree with this change, this could be highlighted when Transco sends the Final Modification Report to the Authority."

Discussing the degree of control delivered by this Modification Proposal and existing unaffected governance BGT noted "We believe that the proposal and supplied drafting contain adequate control to determine the extent of revisions allowed before it would be necessary to raise a new proposal."

EDF and E.ON both communicated a preference that this Modification Proposal should not be amended further. EDF comment that, "We believe that discussions of limiting the possibility to amend both sets of proposals should be raised under a new modification proposal." E.ON stated that, "We would not support the provision of additional legal text specifying that changes to a proposal would only be considered where it is in response to a specific representation."

Transco response

Transco has concerns in regard to the governance of amendments that may be made in the absence of the additional changes it has proposed to the legal text. These changes to the proposed legal text (as put forward by Transco as part of

the DMR), were intended to only permit amendments to a Proposal to be effective if representations have been received supporting such an amendment and to ensure that such changes can demonstrate that they would better facilitate the relevant objectives without materially affecting the primary intent of the original Proposal. Were these text amendments not to be made Transco questions whether effecting changes post consultation, which are not as a direct result of the consultation process, calls into question the meaningfulness of the consultation process.

EDF and E.ON assert that this Proposal may be implemented with no additional legal drafting required, adding that any requirement for a provision which better defines when an amendment, post consultation, can be made, should be raised as a new Modification Proposal. Transco reiterates that without clearly defined controls and appropriate definition regarding when and to what degree changes to a Proposal can be made, post consultation, Transco is unable to support the Proposal as such changes may compromise its obligations under its GT Licence, Amended Standard Condition 9.4 and 9.5.

- **Amendment to Shipper licence obligations :** BGT, TGP, SGD and E.ON asserted that there was no requirement to amend the Shipper licence. BGT stated that, "We do not see the need for any revision to the obligations contained within a shipper licence. The Proposal simply allows some flexibility in development." SGD commented that, "Transco must ensure that any changes to the Code further the relevant objectives under its licence."

GMS concurred with this perspective "Shippers do not have an existing licence obligation to ensure that their proposals better facilitate the relevant objectives and so it is unclear why Transco feels it may be necessary to have such an obligation for changes to existing proposals in order to ensure that it (Transco) can continue to discharge its own licence obligations."

Transco response

Transco maintains the view that Users are seeking parity with Transco in respect of Transco's ability to make amendments to a Proposal post consultation, however some respondents do not believe that such parity has to come with a similar level of responsibility and governance as that required of Transco. Transco would suggest that the Proposal should consider Transco Licence obligations in respect of assessing Proposals against the relevant objectives and additionally consider means by which the proposer can demonstrate the change is more beneficial than the original Proposal. Transco notes that the Proposal does not currently identify how the governance processes of such changes will be managed and controlled.

- **Extending Modification Process timescales :** EDF stated that, "As the processes proposed under 0713 are currently permitted for Transco Proposals we do not see any extra costs for Transco. EDF Energy does not envisage that major amendments will be made to proposals and as a consequence we only envisage minor changes in legal drafting and system impacts. We believe that all costs should be allocated to the modification procedure."

SSE and E.ON supported the view of EDF with reference to costs, but also negated the position that timescales may increase. E.ON noted that, "We do not share Transco's viewpoint that these proposed changes would require an extension to timescales or increased funding. Extending the timescale for Transco to review and amend drafted legal text would be both inappropriate and inflexible. We would expect that in most circumstances, the Proposer would amend the legal text to reflect proposed changes." E.ON also added that, "Increased funding would not be necessary as Transco only need to consider a variation to an existing proposal. If the changes were substantial, a new modification would be raised, affording the usual time periods and funding in which to consider such proposal." BGT put forward the perspective that timescales could increase but suggested that, "in the majority of cases the requirement for variation will have emanated from other parts of the existing process and therefore possible to absorb within existing timescales."

GMS noted that, "If text is provided by a User and the User wishes to vary its proposal then it would seem logical that the User should vary its text to reflect that change."

TGP stated that, "We accept that there could be occasions, say if a User makes a late change after the DMR has been issued, when Transco may have to reconsider the legal text (assuming they are supporting the Proposal). Under these circumstances we believe the Modification Panel should be able to agree a variation to the standard process times" and also noted that, "a relatively small amount of additional resource expended at the front end of the process" may "also result in overall savings in industry effort expended in the modification process."

Transco response

Transco reiterates that in the absence of any clear definition regarding the Modification process and management of post close-out changes Transco fails to see how some respondents, to this section, can assume that no extension to Modification timescales is required to facilitate Transco in carrying out its licence obligations. The Proposal provides no details in regard to the extent to which a Proposal may be changed before a new Proposal is required. Additionally it does not address the interaction between Transco and the proposer where a change is desired. Transco is obligated to assess the change and evaluate whether such a change meets the relevant Code Objectives. In its current role as custodian of the Modification process Transco is required to assess whether the amendment constitutes a material change to the original Proposal and ensure that any amendments are accurately reflected in the Modification reports, impact assessments and legal text. Transco notes that such activities may required extended timescales and result in increased costs.

- **Relevant Objectives:** EDF Energy stated that, "0713 will better facilitate the relevant objectives as defined under amended licence standard condition 9 (b), which states that Transco is required to efficiently discharge of its obligations. We believe that allowing proposal to amend modification will lead to a more efficient modification procedure." TGP added that "All of the proposals [Modification Proposals 0712: 'Additional Information in Modification

Proposals', 0713: 'Ability for Users to Vary their Modification Proposals', 0714: 'Use of Principles of Governance in Applying Section Y of the Network Code' and 0715: 'Modification Panel Approval of the treatment of Representations in Final Modification Reports'] have been raised recognising Transco's responsibilities under its Standard Licence Condition 4D (1) (to ensure that no party obtains any unfair commercial advantage etc)". E.ON agreed with both points made.

SSE noted that it, "believe that implementation of this proposal would better facilitate the relevant objectives of:

- facilitating competition in shipping and supply; and
- ensuring no undue discrimination by providing equitable

treatment of Transco and User modification proposals."

Transco response

In the context of allowing proposers to amend their Proposal prior to issue of the Draft Modification Report and the consultation process Transco agrees that the Proposal may go some way to improving the efficiency and flexibility of the Modification process. Transco believes that improving these processes may better facilitate the relevant objective standard condition 9 (b). However we fail see to how such a change will directly benefit greater facilitation of competition between shippers and suppliers.

As drafted, given the absence of details relating to the process, management and extent to which amendments to a Proposal may extend, Transco does not see how this Proposal represents better facilitation of the relevant objectives. If implemented in its current form Transco remains concerned that the lack of process definition and governance will lead to inefficient management of the Modification Process and poorly defined changes to the Network Code.

As previously stated in section 3. Transco does not believe that Standard Licence Condition 4D (1) is relevant to this Modification Proposal. Transco contend that under prevailing provisions no party obtains an unfair commercial advantage under the current process and there are no preferential or discriminatory arrangements entered into. As such, Transco does not see how this Proposal represents better facilitation of the relevant objective in this context.

Transco recognises that the intent of the Modification Proposal is to better facilitate the relevant objectives through the provision of better information. However, having carefully considered responses to the Proposal, Transco believes that neither the proposer nor the respondents have demonstrated how the Proposal better facilitates the 'code relevant objectives'.

- **Implementation date for this Proposal :** Representations from SGD, GFO, SSE, TGP, EDF and E.ON all supported the earliest possible implementation for this Modification Proposal. SGD noted that "All of these modifications [Modification Proposals 0712: 'Additional Information in Modification Proposals', 0713: 'Ability for Users to Vary their Modification Proposals', 0714: 'Use of Principles of Governance in Applying Section Y of the Network

Code' and 0715: 'Modification Panel Approval of the treatment of Representations in Final Modification Reports'] should be implemented as soon as Ofgem has made its decision. We see no reason for any delay."

GMS commented that "The Network Code Committee should be to determine an appropriate date and this should be included as part of Transco's Recommendation in the FMR."

Transco response

Transco does not support the implementation of this Proposal as drafted.

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

This Modification Proposal is not required to facilitate any such change.

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 Proposal is not required to facilitate any such change.

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

No specific programme of works is anticipated.

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

Transco notes that an implementation date is not provided as part of the Proposal, however representations indicate the desire to implement this Proposal at the earliest opportunity.

16. Recommendation concerning the implementation of the Modification Proposal

Transco does not recommend implementation of this 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

Transco does not recommend the implementation of the Modification Proposal and therefore has not provided legal text.

Signed for and on behalf of Transco.

Signature:

Richard Court
Commercial Frameworks Manager
NT & T

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 **0713**, version **2.0** dated **18/11/2004**) 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 **2.0**.

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 appropriate

provided 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.