

Shippers, Transco and other interested parties

Our Ref: net/cod/mod/713
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8 February 2005

Dear Colleague,

Network Code Modification Proposal 713 – ‘Ability for User’s to vary their modification proposals’.

Ofgem¹ has carefully considered the issues arising from this proposal and has decided not to direct Transco to implement the modification, as we do not consider that, as drafted, it will better facilitate the achievement of the relevant objectives of Transco's Network Code, as set under standard condition 9 of Transco's Gas Transporter (GT) licence. This letter further explains this decision.

Background to the proposal

Standard condition 9 of Transco's GT licence requires it to establish transportation arrangements consistent with its duties under section 9 of the Gas Act 1986 and to facilitate the achievement of certain relevant objectives, as prescribed in that licence condition. The document specifying such transportation arrangements is referred to as the Network Code. The GT licence also obliges Transco to prepare a document outlining the modification procedures for the Network Code.

Until recently the modification rules were a separate document and therefore not subject to the governance arrangements they provided. The implementation of modification proposal 679 brought about the inclusion of the modification rules in Transco's Network Code (Section Y). As such, any signatory to the Network Code can propose an amendment to the modification rules.

Since the implementation of modification proposal 679, a number of modification proposals have been raised in relation to modification rules. Modification proposal 713 is one of a suite of modification proposals (712-715) seeking to improve governance

¹ Ofgem is the Office of the Gas and Electricity Markets Authority. In this letter the terms Ofgem and the Authority are used interchangeably

arrangements for Network Code changes. These proposals are largely the result of work undertaken by the Gas Forum working group.

The proposal

The provisions of section Y of the Network Code currently permit Transco initiated modification proposals to be amended, up to and including the production of the Final Modification Report (FMR), whereas User initiated modification proposals can only be amended up to the point where it is introduced to the modification panel. From this point on, the proposer ceases to have control over the content of the proposal. Should a proposer wish to amend a proposal, they are required to withdraw the proposal and submit another, which is treated as an entirely new proposal. The withdrawn proposal will lapse. Withdrawal is itself only an option up to the point where a Draft Modification Report (DMR) is produced and consulted upon. This proposal seeks to amend section Y of the Network Code such that User proposals are afforded equal treatment to those of Transco.

Respondents' views

Twelve participants responded to the consultation on this proposal. Eleven of these expressed support for the implementation of the modification proposal, with the twelfth participant providing supporting comments. Whilst it was acknowledged by some respondents that the current arrangements have operated satisfactorily to date, there was scope for improvement. Respondents were generally of the view that implementation of this modification proposal would improve the efficiency, transparency and accountability of the Network Code procedures.

Respondents felt that by allowing Users to modify their proposals up to the preparation of the FMR equality between Transco and User initiated modification proposals would be achieved.

Some of the key issues identified by respondents were as follows:

Clarity on the Change Process Proposed

There was not agreement amongst respondents as to how this proposal would work in practice. For instance, respondents expressed differing opinions as to when a User should be able to vary their modification proposal. Most respondents were of the view that the intent of the proposal to extend the same privileges to Users involved a User proposal being amended at any stage of the modification process, up to and including production of the FMR. Another respondent was of the view that the ability of Users to vary their proposals only up to the publication of DMR would allow sufficient flexibility whilst not undermining the ability of others to comment as part of the consultation process.

New Licence Obligation on Shippers

Those respondents who commented stated that there was no requirement for the introduction of a new licence obligation upon shippers to ensure that amendments to proposals better facilitate the relevant objectives. Respondents noted that there is no existing requirement on User proposals, though two noted that any proposal must facilitate the achievement of the relevant objectives in order to be accepted by Ofgem.

Extending Modification Process Timescales and Additional Funding

Several respondents considered that allowing Users to vary proposals would not require an extension to current modification process timescales. Some felt that as amendments to proposals will be of a minor nature (as any significant change would result in a new modification proposal) any anticipated redrafting of legal text or re-assessment of systems impacts would be minimal and could be absorbed into existing timescales. Some respondents also highlighted that there is flexibility in the existing process to change timescales as required. It was also felt by some respondents that any costs of re-assessing systems impacts would be negligible, as it is likely to simply involve making public the analysis already undertaken.

Transco's views

While Transco acknowledges that the intent of the proposal is to improve the prevailing modifications rules and welcomes such initiatives, Transco does not recommend that this proposal be implemented. Transco does not consider that the procedures and licence obligations to support this change have been appropriately considered.

As part of the DMR consultation, Transco sought clarity particularly on when changes to a proposal may be initiated or how the consultation process and timescales would be managed. Transco also has concerns that the proposal does not include a process or clear controls for governing post-consultation amendments. Transco also considers that its ability to comply with its GT licence condition may be compromised if Users were able to make post-consultation amendments, as it may not be able to demonstrate that any proposed modification to the Network Code would better facilitate the relevant objectives, and notes that Users do not have equivalent obligations upon them.

Transco also raised concerns at the impact this proposal may have upon modification process timescales, and the costs of operating that process.

Ofgem's views

Ofgem welcomes steps to improve the governance of the Network Code modification procedures and is therefore sympathetic to the intent of this proposal. It is clearly anomalous for the original author of a proposal to have little say in its development

following its discussion at the modification panel. The option of withdrawal and re-submission is inefficient when compared with the incremental improvements that may otherwise be available. However, Ofgem concurs with Transco that the proposal could have benefited from some further development that may have clarified how this principle would work in practice.

Whilst Ofgem believes that the proposal would promote greater inclusiveness and ownership of the modification process by Users, as well as mitigating the need for an obviously inefficient step, we are concerned that these benefits may come at the expense of transparency and accountability. Ofgem understands that the intent of this proposal is to afford Network Code Users the same rights to vary their proposals as Transco. That is, that the proposal may be modified by the User at any point up to issuance of the FMR. Whilst Ofgem would support equitable treatment in principle, the proposal does not acknowledge that Transco is in this position because of its role as secretariat and author of the FMR. Moreover, it is Transco that has the obligations under standard condition 9 of its GT licence to fulfil this role. Ofgem also shares the concern of Transco and the respondent who stated that allowing changes to the proposal late in the process could undermine the ability of parties to comment, and therefore the consultative approach of the modifications process itself.

Ofgem considers that it would be relatively straightforward to allow changes to User proposals at any point up to production of the DMR, as supported by one respondent. This would provide a greater degree of flexibility and ensure transparency. However, this would not satisfy the intent of the proposal, and may preclude some of the benefits of consultation, insofar as limiting the degree to which proposals can be refined in light of responses.

Although there may be relatively simple means of achieving the full intent of this proposal, for instance involving the User working in conjunction with Transco to prepare the FMR, it is not clear from the proposal how this could be achieved within the existing timeframes, which party should have the final say on drafting and how differences should be resolved. Ofgem also considers that it is important that any post-consultation amendments should be strictly limited and not materially change the stated intent of the proposal, and therefore the basis on which respondents have provided views.

In the event that amendments of a more material nature are considered necessary, whether as a result of consultation or otherwise, it may be appropriate to seek comments specifically on those amendments. Although paragraph 8.10 of section Y provides for further consultation on a report, where Ofgem or any modification panel member is of the reasonable opinion that the circumstances relating to that modification proposal have materially changed, this is specifically in circumstances where the report (FMR) has been submitted to Ofgem. In order for the intent of this proposal to be achieved without impinging upon transparency or accountability, it may be appropriate for materially

amended proposals to be referred to the modification panel for consideration, prior to submission to Ofgem.

Ofgem is not of the view that shippers require a new licence obligation to ensure Transco is not compromised in discharging its own licence obligations. As noted by several respondents, shippers do not have a licence obligation to ensure that their modification proposals better facilitate the relevant objectives; though they are bound by the Network Code which itself must facilitate those relevant objectives. It is also upon these relevant objectives that Ofgem will base its decision to accept or reject a modification proposal. It is therefore incumbent upon the proposer of a modification to have regard to these relevant objectives in order to increase the likelihood of the proposal being accepted.

Ofgem's decision

For the reasons outlined above, Ofgem has decided not to direct Transco to implement this modification as Ofgem does not consider that, as drafted, it would better facilitate the achievement of the relevant objectives of the Transco Network Code, as outlined under Condition 9 of its GT licence as it does not make clear the mechanisms and safeguards in making changes following publication of the DMR. If you have any further questions regarding this letter please do not hesitate to contact me on the above number or Jon Dixon 020 7901 7354.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Simpson', with a stylized flourish at the end.

Nick Simpson
Director, Modifications