

**Modification Report**  
**Modification Panel approval of the treatment of Representations in Final**  
**Modification Reports**  
**Modification Reference Number 0715**  
Version 1.0

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:-**

"To amend the Network Code Modification process to allow time for Members of the Panel to comment on, and give approval to, final modification reports.

The purpose of this Proposal is to give parties to the Network Code the comfort and protection afforded by a balanced oversight process. It requires Transco to send a copy of the Modification Report in near Final state to each Modification Panel Member (Member) and each respondent allowing an additional two business days for Members to express their opinions and to have those opinions recorded in the version of the FMR which finally goes to Ofgem and is published to the community at large."

### **The proposer provides the following draft legal text:-**

"Section Y

Our proposed legal drafting is set out below.

Section Y,

Paragraph 8.9.2(a), Add new sub-paragraph:

"(iii) send a copy of that report to each Member and to each User and Non Code Party that submitted (and did not withdraw) a representation (if any), allowing two (2) Business Days for each Member to express an opinion as to the adequacy of the treatment of the representations so received (and not so withdrawn); and"

Amend paragraph 8.9.2 (b);

"at the expiry of the period provided for Members opinions under paragraph 8.9.2 (a) (iii) incorporate opinions received (if any) and submit a copy of that report (and attachments (if any)) to the Authority, seeking direction or consent to the making or rejection (as the case may be) of the Modification; and,"

Amend 8.9.3 (j);

".....paragraph 8.2.2 (not applicable to Third Party Modification Proposals), or were received in accordance with paragraph 7.3 and the representations...."

Amend sub-paragraph (k)(i)

".....in accordance with paragraph 8.10.1, or were received in accordance with paragraph 7.3; and"

Add new sub-paragraph:

"(s) set out the opinions (if any) expressed by Members in accordance with paragraph 8.9.2 (a)(iii)."

## 2. Transco's Opinion

Transco supports the intent of the Modification Proposal and believes that such changes may improve clarity in the context of appropriating better developed and considered changes to the Network Code. Transco regards a Proposal which seeks to improve the standard, quality and definition of subsequent Proposals being submitted into the Modification process as a positive initiative. Transco considers that the Proposal may provide benefits to the following parties:-

- The community, by ensuring all responses are accurately reflected in the Modification report.
- Transco, in providing greater clarity in respect of formulating a balanced and accurate the Final Modification Report (FMR).
- Ofgem in reaching a decision based on the accurate interpretation of representations.

Under prevailing Licence Condition 9.9 (a) (iii) Transco notes that it is already obliged to give particulars of any representations made by a gas shipper or other person with respect to a Proposal. All representations are attached to the FMR submitted to the Authority. Although Transco complies with this Licence obligations it recognises that for the purposes of clarity, and to ensure that Users are satisfied with Transco's interpretation of their responses, a review of the summary of responses may improve the current Modification process.

The Proposal seeks to provide an additional two business days for the Modification Panel to express an opinion "as to the adequacy of the treatment of the representations so received". Transco notes that it is proposed that it is only the Panel members opinions received as part of this review process will be recorded as part of the FMR. Given prevailing Modification process timescales Transco proposes to append the responses received from Panel members to the FMR and submit to Ofgem by close of the next business day. Transco supports the proposed review of the responses, however, it has concerns relating to equitability of the process as it is only the Panel members opinions which are appended to the FMR rather than any directly received from respondents referred to within the draft FMR.

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

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 an 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.

Transco believes that the formalisation of provision of greater information may improve the Network Code rules and that the intent of the Modification Proposal may better facilitate the relevant objective in that it may provide a better informed Modification process and in turn may enable Transco to more efficiently discharge its obligations under the licence standard condition 9 (b).

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

**a) implications for the operation of the System:**

No direct implications are anticipated.

**b) development and capital cost and operating cost implications:**

No direct implications are anticipated.

**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:**

Not applicable.

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

Implementation of this Proposal would not be expected to impact price regulation.

**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**

No direct implications are anticipated.

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

No such implications are anticipated.

**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**

No major consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party are anticipated as a result of the implementation of this Proposal.

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

**Advantages**

The Proposal should give parties to the Network Code the comfort that their views have been accurately reflected, and further opportunities to ensure that this is the case.

**Disadvantages**

The Proposal may introduce unnecessary delay to the Modification process, opening an additional cycle of interpretation. .

The Modification process is lengthened by an additional two days prior to the submission of the Final Modification Report to the Authority.

By only taking account of Panel Members' view in relation to the treatment of representations in the FMR it may raise concerns among non Network Code parties that their views have not been accurately reflected.

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

Transco received 12 representations to the Proposal from the following:

Association of Electricity Producers	AEP
BP Gas Ltd	BPG
British Gas Trading	BGT

EDF Energy plc	EDF	
E.ON UK plc	EON	
The Gas Forum		GFO
Gemserv	GEM	
RWE npower plc	RWE	
Scottish and Southern Energy plc	SSE	
Shell Gas Direct	SGD	
Statoil (UK) Ltd	STA	
Total Gas and Power Ltd	TGP	

11 of the respondents supported the Proposal  
1 respondent (GEM) provided comments

### **Transparency, accountability and efficiency**

SSE state that they are “supportive of proposals that seek to improve the governance of the modification process and enhance its transparency and accountability. To that end SSE agree that it would be beneficial to introduce a further stage in the consultation process”. AEP believe that the proposals, Modification Proposal 0712 Additional Information in Modification Proposals and Modification Reports, Modification Proposal 0713 Ability for users to vary their Modification Proposals Modification 0714 Use of Principles of Governance in Applying Section Y of Network Code and 0715 Modification Panel approval of the treatment of Representations in Final Modification reports, “provide greater transparency of the process and lead to more efficient and effective modification arrangements”. GFO state “ these proposals 0712, 0713, 0714 and 0715 would improve the governance regime by introducing greater transparency and equality”.

RWE state that, “the impact of the Final Mod Report is such that Shippers will want to ensure that their views are correctly interpreted. Such a move can only improve the transparency of the process”. In ensuring that the Final Modification Report (FMR) is representative BGT understand that “ there may have been only a small number of occasions where Users have felt sufficiently misrepresented to take up the issue formally, the role of this element of the governance process in preparing the FMR is key in maintaining the required transparency and efficiency of the process”

### **Transco Response**

As proposed, a review of the summary of responses may improve and make the current modification process more transparent.

Transco would like to clarify that it is already obliged under Licence Condition 9.9 (a) (iii) to give particulars of any representations made by a User or other person with respect to the Proposal. As such, all representations, in full, are attached to the FMR and submitted to the Authority.

It should be noted that Users, are also able to write to Ofgem if they consider that their representations have been misrepresented.

Baring the above in mind Transco does not necessarily share the view that the Proposal makes the modification process more efficient as the Proposal would lengthen the process and introduce a further consultation process.

### **Provision of Opinions to FMR**

Where respondents consider that their responses have not been adequately reflected by the Final Modification Report, there was a mixed response as to whether the comments or corrections should be an addendum to the Final Modification Report (FMR) or whether the FMR itself should be amended. SSE welcomed Transco's suggestion that, "any views received would be attached to the FMR and sent on to the Authority." EDF believes "that any comments received on the Final Modification Report (FMR) should be attached in an appendix" RWE recommended, "that any comments from a User or Panel Member should be included in the FMR, rather than an addendum to it."

TGP state the review is to "only comment on how their representations have been treated. This is not an opportunity for new points to be raised or for additional DMR responses to be incorporated." SSE's understanding is that "respondents would be able to highlight any concerns about the treatment of their comments in the Final Modification Report."

In respect to whether Users views have been adequately reflected, SGD state, "It would be incumbent on the User to ensure that any concern is brought to the attention of the Panel." RWE are presuming that "it will be responsibility of respondents to verify that their views have been adequately represented."

### **Transco Response**

The representations are mixed in relation to the interpretation of the Proposal's intentions regarding the treatment of any comments received in relation to the FMR. However, taking into account the representations received and its Licence obligations Transco continues to consider that it would be most efficient and economic to append any comments from Panel members as an appendix to the report.

In order to allow time to collate responses, following the two day consultation period Transco considers it necessary to add one further day to the modification timetable. Transco therefore has modified the legal text to allow this time.

### **Views regarding Gas Transportation Licence Condition 9 (12)**

TGP, EON and SSE views are that there is no need to review this condition if this Proposal is implemented. SSE considers that "this Network Code change would complement the existing licence provisions. It would not alter the Authority's role in the modification process but would provide parties with

comfort that their views have been accurately reflected, plus the opportunity to flag up any concerns before the FMR is submitted to the Authority.”

### **Transco Response**

In light of the responses Transco agrees that this Licence Condition 9 (12) does not need to be reviewed if this Proposal is implemented.

### **How does the Proposal better facilitate the relevant objectives?**

SSE believe that the Proposal would better facilitate the relevant objectives by removing, “ any suggestion that Transco would manipulate the Final Modification Report conclusions to its own benefit, therefore satisfying the objective of preventing undue discrimination”.

STUK state, “Transco would ensure that they have accurately reflected all shippers’ responses and would therefore not be open to criticism that it had sought to gain an unfair advantage by favouring representation that supported Transco’s own position at the expense of those which opposed it”.

GEM supports the proposer’s views that the Proposal “would better facilitate Transco’s discharge of its licence Condition 4D. Since relevant objective b) in licence Condition 9.1 is “ the efficient discharge of its obligations under this licence” each of the Proposals (0712, 0713, 0714 and 0715) must therefore further facilitate the relevant objectives.

EON state that “715 facilitates the relevant objective 9.1 (b) the efficient discharge of its [Transco's] obligations under [its] license; one such obligation being Standard Condition 4D (1) to ensure that no party obtains any unfair commercial advantage from a preferential or discriminatory arrangement.”

### **Transco Response**

The Proposal provides Users an opportunity to comment on Transco’s treatment of their representations and respond via the Panel members. This is in addition to all responses also being attached to the final report when delivered to the Authority. This situation could be viewed as unfair or discriminatory against Transco and therefore at odds with condition 4D and as such also 9.1 (b). However, to the extent that Users can already provide further comment to Ofgem regarding their opinion of Transco’s treatment of their representation in the FMR, Transco does not consider that the current interpretation of the Proposal would result in a significant shift in relation to condition 4D.

### **Role of Panel members.**

BGT state that this Proposal, “ also reinforces the role of Panel members as representatives of the industry in matters of governance and process.”



## **Transco Response**

Transco believes that Modification Panel member's responsibility is to reach fair, considered and unbiased guidance in regard to the administration of the modification process and that any changes should not furnish members of the Modification Panel with greater powers than those of other Network Code Users.

## **Implementation timescales**

Seven respondents comment on the implementation timescales of this Proposal. SSE, STA, BGT, TGP, GFO, and EDF believe the Proposal could be implemented without delay. GEM believes that the "Network Code Committee should determine an appropriate date and this should be included as part of Transco's Recommendation in the FMR"

## **Transco Response**

The Proposal did not include a proposed implementation date. However, taking into account the representations received, Transco believe that there is no requirement to consult the Network Code Committee, should Ofgem direct implementation of this Proposal, Transco considers it could be implemented shortly thereafter.

### **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 program of works required.

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

Transco could implement the Proposal immediately following Ofgems direction to implement for all Modification Proposals raised following Ofgems direction.



**16. Recommendation concerning the implementation of the Modification Proposal**

Transco supports the intent of this Proposal, but remains concerned regarding the limitation of only allowing Panel members to respond to treatment of representations in the draft FMR and to the introduction of a second set of responses without allowing Transco or other Users to respond to these responses.

However, on balance Transco considers that the benefits to the relevant objectives outweigh the above concerns and as such Transco recommends implementation of the Modification 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 to modify the Network Code and Transco now seeks direction from the Gas & Electricity Markets Authority in accordance with this report.

## 19. Text

### **[Draft] Proposed Legal Text**

#### **MODIFICATION 715**

#### **Modification Panel approval of the treatment of representations in Final Modification Reports**

##### **Section Y: Modification Rules**

*Delete paragraph 8.9.2 and replace with the following:*

“(a) Transco will submit a copy of the finalised Modification Report to:

- (i) each Third Party Participant, each User and Non-Code Party (if any) that submitted (and did not so withdraw) a representation with regard to the draft Modification Report pursuant to paragraph 7.3 or 8.9.1(b); and
- (ii) each Member;

within fifteen Business Days immediately following the expiry of the period referred to in paragraph 8.9.1(b) or the period provided for representations pursuant to paragraph 7.3, and attach to that report all representations (if any) so received (and not so withdrawn);

(b) within two (2) Business Days of receipt of the Modification Report submitted pursuant to paragraph 8.9.2(a), each Member, may submit a response to Transco. Such response shall be limited to the adequacy of the treatment of such representation in the Modification Report with regard to the Relevant Objectives;

(c) within one (1) Business Day of receipt by Transco of any response provided pursuant to paragraph 8.9.2(b), Transco shall attach such responses provided pursuant to paragraph 8.9.2(b) to the Modification Report and:

- (i) submit a copy of the Modification Report to the Authority, seeking consent to the making of the Modification; and
- (ii) send a copy of the Modification Report to each User, each Member, each Third Party Participant and each Non-Code Party (if any).

*Amend paragraph 8.9.3 (j) as follows:*

“provide a summary of the representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report);

(i) of those persons (if any) which the Development Work Group consulted, pursuant to the Terms of Reference, paragraph 8.1.2(b) or paragraph 8.2.2 (not applicable to Third Party Modification Proposals);

or

(ii) received by Transco in accordance with either paragraph 7.3 or paragraph 8.9.1(b)”

*Amend paragraph 8.9.3 (k) as follows:*

“detail the representations...in accordance with paragraphs 8.10.1 and 7.3;  
and”

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 **0715**, version **1.0** 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 **1.0**.

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.