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NGT, Shippers and other  
interested parties.

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02 February 2005

Dear Colleague,

**Modification Proposal 715: Modification Panel approval of the treatment of representations in Final Modification Reports.**

Ofgem<sup>1</sup> has carefully considered the issues arising from this proposal and having regard to the relevant objectives of Transco's Network Code, as set under standard condition 9 of Transco's Gas Transporter (GT) licence and Ofgem's own statutory duties<sup>2</sup>, has decided to direct Transco to implement the modification. This letter gives reasons for this decision.

**Background**

Standard condition 9 of Transco's GT licence requires Transco 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 Transco's Network Code. The GT licence also obliges Transco to prepare a document setting out procedures for the modification of its 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 the Network Code (Section Y). As such, any signatory to the Network Code can propose an amendment to the modification rules.

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

<sup>2</sup> Ofgem's statutory duties are wider than consideration of the Network Code relevant objectives and include, amongst other things, a duty give regard to best regulatory practice and the social and environmental guidance provided to Ofgem by the government.

Under Transco's Network Code arrangements, Transco receives, summarises and may respond to the representations of shippers and other interested parties provided in response to its consultation on the Draft Modification Report (DMR) for a given proposal. The summary of representations, and where applicable Transco's response, are then incorporated in the Final Modification Report (FMR), which is presented to Ofgem in order to inform its decision on whether to accept the proposal and direct its implementation.

Whilst it is acknowledged that Ofgem receives copies in full of all representations as part of the FMR, shippers have expressed the view that on occasion, not all representations receive balanced analysis or may have been inaccurately reflected within the FMR. It is claimed that this is particularly noticeable where respondents' views conflict with those Transco.

### **The Modification Proposal**

This modification proposal seeks to amend Transco's Network Code modification process so as to allow modification panel members an opportunity to comment on Transco's treatment of shipper representations within the FMR. This involves amendments to Section Y of the Network Code and would require Transco to provide each modification panel member with a copy of the FMR prior to finalisation. Panel members would then have 2 business days to review the treatment of the representations and inform Transco of any changes that they consider necessary to the FMR in order for it to more accurately reflect respondents' views.

The proposer of this modification proposal states that Ofgem and all other stakeholders would be able to more confidently rely on the contents of the FMR, without the need to refer back to or check on the individual representations.

The general aim of this proposal is to ensure that all representations receive fair treatment by Transco and that the FMR is not biased in favour of Transco.

### **Respondents' Views**

Transco received twelve responses to its consultation on this modification proposal, all of which were supportive. In general, respondents considered that implementation of the proposal would improve the governance of Transco's Network Code procedures, particularly with respect to transparency and accountability. One respondent, seemingly concerned with efficiency of the process, pointed out that the proposal does not require Panel members to scrutinise responses, but provides an opportunity for review, without excessive extension of the existing timescales. They also noted that there have only been a small number of occasions where Users have felt sufficiently misrepresented to take up the matter formally. Another respondent, (the proponent of the proposal) also envisaged that the changes within the proposal would only be used on rare occasions.

Several respondents stated that the current situation could be considered discriminatory and provide Transco with an unfair commercial advantage, contrary to the provisions of standard condition 4D of Transco's GT licence. Respondents considered that addressing this perceived unfair advantage would facilitate the relevant objectives, insofar as the efficient discharge of Transco's obligations under its GT licence.

### **Transco's Views**

Transco supports the intent of this modification proposal and recommends its implementation. Transco considers that the proposed changes may serve to improve the quality of FMRs and consequent modifications to its Network Code. Transco contends that a better informed modification process may enable it to more efficiently discharge its obligations under its GT licence, thereby facilitating the relevant objective set out in standard licence condition 9 (1)(b). However, Transco does state that under standard licence condition 9 (9)(a)(iii) it is already obliged to provide any interested person, unless marked confidential, with copies of all representations relating to a proposal.

Transco does not agree with those respondents who considered that the proposal will better facilitate its obligation in respect of standard licence condition 4D, stating that it already carries out its duties in a non-discriminatory and non-preferential manner in respect of gas shippers and gas suppliers. Transco also highlights that the licence condition refers to conduct in connection with a business other than its transportation business.

Transco has raised a concern over the equitability of the process as only Panel members' opinions are appended to the FMR rather than any directly received from respondents.

### **Ofgem's Views**

Ofgem supports the principles of good governance and welcomes steps to improve the transparency, accountability and participation in network code modification procedures. Given the number and nature of responses to Transco's consultation on this proposal it is clear that the community would welcome greater involvement in the treatment of representations within the modification process.

Currently, as acknowledged within this modification proposal, when submitting a FMR to Ofgem for its decision on a given proposal, Transco also appends all of the representations submitted in relation to that proposal. These representations are considered in full by Ofgem as part of its analysis on whether to accept or reject. Transco's summary serves to highlight for the interested reader the more salient points and provide a useful opportunity for Transco itself to respond to and/or clarify points raised, as appropriate. Any summation can, of course, be a matter of understanding, interpretation and opinion, but the inclusion of the representations in full provides a safeguard against any bias, whether deliberate or unwitting. Respondents themselves

can further assist by endeavouring to make their representations concise and unambiguous.

Where individual respondents feel that their representations have been misrepresented within the FMR they can contact Ofgem directly. This is consistent with standard condition 9(12) of the GT licence, which states that:

“Any question arising under the code modification rules as to... whether representations relating to such a proposal and made in pursuance of the rules have been properly considered by the licensee, shall be determined by the Authority”.

Ofgem notes the proposal that whereas the FMR (in draft) will be circulated to all parties that submitted a representation, comments on the treatment of those representations shall be made by Panel members. Ofgem supports the modification Panel playing a greater role in the modification process. In this context, the role envisaged for Panel members could be useful in, for instance, clearing up genuine misunderstandings or spurious complaints.

The introduction of this modification proposal could impinge on the efficiency of the existing process, insofar as the timescale leading up to submission of the FMR to Ofgem may be extended. As noted by one respondent, there have been, and hopefully will continue to be, relatively few instances where Users have felt sufficiently misrepresented to take up the matter formally. However, implementation of this modification proposal as drafted would mean an extension to the timescales for non-urgent modifications of three days. Transco has identified within the FMR and accompanying legal drafting that in addition to the two business days allowed for the review of representations, it would require a further day in order to allow it to collate any supplemental responses. Ofgem considers that this would be reasonable, albeit that Transco intends to simply append supplemental responses, rather than seek to incorporate them in the body of the report. For the sake of clarity, Ofgem suggest that Transco take appropriate steps to deal with any comments made, rather than simply appending them in all cases.

Several respondents considered that implementation of this modification would assist Transco in discharging obligations under standard condition 4D of the GT licence, which obliges the licensee to conduct its transportation business such that neither it, nor any affiliate or related undertaking, or any gas shipper or gas supplier receives any unfair commercial advantage, including any such advantage from a preferential or discriminatory arrangement, in connection with a business other than its transportation business. The condition defines the transportation business as including LNG storage, metering services etc.

Transco's administration of the network code is currently an activity of its transportation business, in accordance with the conditions of its GT licence. Furthermore, Ofgem is not aware of any evidence or formal complaints of an unfair commercial advantage being

obtained by Transco in respect of its administration of the Network Code. Therefore, Ofgem does not consider standard condition 4D to be relevant to its decision on this modification proposal, or the governance of the Network Code more generally. However, consideration of standard condition 4D may become relevant if, in the event of Transco selling one or more of its distribution networks, a uniform network code is set up which is administered by a joint office<sup>3</sup>, being a separate entity to Transco's transportation business.

## **Ofgem's Decision**

Ofgem has, for the reasons given above decided on balance to direct Transco to implement modification proposal 715. Ofgem considers that the modification proposal, as drafted, will better facilitate the relevant objectives of Transco's Network Code insofar as efficiently discharging its licence obligations to operate modification procedures. Benefits will accrue by way of improved transparency, accountability and participation which will make the modification process more robust, without undue loss of efficiency. If you would like to discuss any of the matters raised in this letter, please contact Leigh Henderson on 020 7901 7474, or email [modifications@ofgem.gov.uk](mailto:modifications@ofgem.gov.uk).

Yours sincerely

Nick Simpson

**Director, Modifications**

Signed on behalf of the Authority and authorised for that purpose by the Authority

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<sup>3</sup> For further details see the Gas Distribution Network Sales section of the Ofgem website at: [www.ofgem.gov.uk](http://www.ofgem.gov.uk)