

Representation

Draft Modification Report

0521 - Revision of User Admission Criteria to include Transporter verification of its ability to transact with the Applicant User

Consultation close out date: 1 January 2015

Respond to: enquiries@gasgovernance.co.uk

Organisation: Novatek Gas and Power GmbH

Representative: [Jonathan Howard / Mikhail Kotkov]

Date of Representation: 15 January 2015

Do you support or oppose implementation?

Oppose in current form. See our proposed modifications below.

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

The proposed additional criteria places too much emphasis on justifying a non-admission based on third party bank views, rather than on putting forward a viable solution/road map to facilitate the acceptance of an otherwise fully compliant Applicant User's admission.

Are there any new or additional issues that you believe should be recorded in the Modification Report?

Taking each of the proposed additional criteria (to be included as a new admission requirement under TDP Section V2.1.2) in turn:

1. *"The Transporter's account bank has notified the Transporter that it will not deal with the Applicant User."*

It is inappropriate to allow this decision on the part of the Transporter's account bank to dictate the outcome of any Applicant User's admission. In particular, in circumstances where the internal position/policy (which forms the basis of the decision) of the Transporter's account bank is not transparent and so the precise reasoning behind any such decision is not clear.

However, this element may be acceptable provided appropriate adjustments are made to criteria 2 and 3 as discussed below.

2. *"Where the above does apply, the Transporter has been informed by at least one other bank or financial institution which in the Transporter's reasonable opinion is a major and reputable bank in the United Kingdom, that such bank or financial institution would not deal with the Applicant User."*

The opinion of "one other bank or financial institution" does not represent any survey of the market. Following the logic under the proposed modification, in a scenario where one further bank/financial institution is not willing to deal with the Applicant

User whilst 10 other banks/financial institutions are, the Applicant User would fail to meet the admission requirements. This is not logical or fair. Instead, we would suggest that where the Applicant User is able to find at least one bank (which in the Transporter's reasonable opinion is a major and reputable bank in the United Kingdom) that is willing to deal with the Applicant User, this fulfils the admission requirement.

If felt necessary by the Transporter, this may be coupled with an obligation on the part of the Applicant User to hold the Transporter harmless against the Transporter's reasonable costs and expenses in dealing with a different bank.

3. *"The Transporter has provided to the Applicant User details of the Transporter's account bank to enable the Applicant User to discuss the matter directly with the Transporter's account bank."*

We do not consider that this is workable, in particular since we know from previous first-hand experience that it is the case that the Transporter's account bank, upon making its decision not to deal with the Applicant User, is then unlikely to be willing to enter into any discussions with the Applicant User. The Transporter should be obliged to do more to facilitate discussions between its account bank and the Applicant User (as discussed below).

For the reasons given above, we would propose that the following changes are made to the modification:

1. The Transporter should undertake to provide necessary assistance (as requested by the Applicant User) and otherwise facilitate discussion between the Applicant User and the Transporter's account bank, rather than simply providing the Transporter's account bank details and so leaving it up to the Applicant User to handle the issue with the Transporter's account bank as indicated at TPD Section V2.1.2(j)(iii). This may be included as a secondary avenue if the Transporter's account bank will not enter into discussions with the Applicant User.
2. The Transporter should be obliged to discuss with the Applicant User alternative approaches as to how to complete the User Application process in the event that TPD Sections V2.1.2(j)(i) and 2.1.2(j)(ii) apply (other than corresponding directly with the Transporter's account bank).
3. The Transporter is obliged to accept the Applicant User's reasonable alternative proposals with respect to using a bank or a financial institution which is a major and reputable bank in the UK, subject, if felt necessary by the Transporter, to the Applicant User holding the Transporter harmless against its reasonable costs and expenses occasioned thereby. Failure to so accommodate the Applicant User would in actual fact contradict the stated "Relevant Objectives" of this proposed modification, i.e. the securing of effective competition. Please refer to our discussion below under "Relevant Objectives".

Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

The modification report concludes that its implementation would better facilitate effective competition between relevant shippers (by minimising the risk of socialised bad debt costs being recovered from other issuers).

This is not correct. The non-admission of an otherwise fully compliant Applicant User will have a clear and direct negative impact on competition, far outweighing any level of risk or potential increased cost to the industry (or any risk of socialised bad debt having to be recovered from other issuers). There are also clear risk management benefits in having diversified banking arrangements (by introducing a second bank account besides the Transporter's account bank).

Whilst we do not accept the legitimacy of the concerns relating to any increased costs or complexity involved in opening a second bank account, there is a simple solution to this by requiring the Applicant User to reimburse any reasonable costs and expenses incurred in the process of opening any required second bank account.

Impacts and Costs:

What analysis, development and ongoing costs would you face if this modification were implemented?

If this modification were implemented, this would have a considerable adverse impact on our business. We note that every week of delay in which our application remains on hold (during which we are unable to commence trading) we are incurring significant losses.

Implementation:

What lead-time would you wish to see prior to this modification being implemented, and why?

As discussed above, we do not consider that this modification should be implemented unless amendments are made to the modification in its current form.

Legal Text:

Are you satisfied that the legal text will deliver the intent of the modification?

No (please refer to our discussion above).

Is there anything further you wish to be taken into account?

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.

To implement this modification and shut out an Applicant User based on these criteria, when that Applicant User's application is otherwise complete and compliant with all requirements under the currently applicable rules, would be legally flawed on a number of grounds, including that it would be (i) procedurally unfair (involving a retrospective change of rules in respect of a pending application that complies with all the applicable rules at the time of its application); and (ii) would deny the Applicant User's legitimate expectations created by the existing applicable rules.