

Mr. Julian Majdanski
Network Code Development
Transco plc
31 Homer Road
Solihull
West Midlands B91 3LT

04 January 2005

Dear Julian,

Modification Proposal 731 – “Specific Amendments to the Modification Rules”

Total Gas & Power Limited (TGP) fully supports the above modification proposal.

General comments on modifications 731

TGP has actively participated in the group of Gas Forum members group and the Governance Workstream to develop improvements to the governance arrangements for the Network Code Modification process. These improvements are contained in the above modification proposal together with others that have been recently implemented or are currently being considered by the industry.

It is not the intent to diminish Transco’s responsibility within the process, fully recognising that they have licence responsibilities over and above the responsibilities of shippers. The driver behind the proposals has been to encapsulate and formalise best practice within the process, recognising that much of the time this best practice is already followed. All of the proposals have been raised recognising Transco’s responsibilities under its Standard Licence Condition 9 (1) (b) (re the efficient discharge of its obligations). In essence, if the governance process can be improved, then this will result in increased transparency and efficiency for all parties and reduce the potential for any preferential or discriminatory arrangement for any individual party.

In the Draft modification report produced for the above proposal, Transco have suggested that applying the formality contained in the proposal, rather than relying on the flexibility that may be offered within the current process, will result in a more onerous process that potentially reflects on efficiency. Our view is that whilst there may have to be a relatively small amount of additional resource expended at the front end of the process, the changes will result in better informed debate and hence an overall improvement in the quality of proposals. It is our belief that this may also result in overall savings in industry effort expended in the modification process. Further this should ensure that Ofgem has better quality information available on which to make its decisions.

For these reasons we are disappointed that Transco has yet to demonstrate full commitment in terms of demonstrating its support and recommending the



implementation of this proposal. In terms of implementation dates, we would continue to argue that these should be as soon as possible and we see little in terms of system development requirements or procedural changes that should cause any delay.

Detailed comments re Modification 731

Transco has raised a number of issues on which it is seeking views from respondents. Some of these are covered above but where they have not then our view is as follows:-

- **The new position of Vice Chairman appointed by User's representatives**

TGP consider that it is important to ensure that the governance process is not subject to, or perceived to be subject to, undue influence and control by any one party. The appointment of a User representative Vice Chairman provides confidence to all Users that a safeguard is in place to ensure that the Panel meeting may continue should the Panel Chairman be absent, for whatever reason.

- **The removal of the concept of Qualified Majority and Unanimity in the context of the Panel decisions**

TGP fully support removing the concept of Qualified Majority and Unanimity in the context of Panel Decisions. We consider that Transco's concerns are addressed through the clear backstop provisions that have been placed into the legal text to ensure that modification proposals, following effective review by the relevant workstream are ultimately circulated for industry consultation.

Furthermore, we believe that removal of these provisions will in future prevent further delay by a minority of User Representatives from insisting that a proposal be sent to a workstream, where a majority of Users favoured progress to consultation.

- **Clarification of Variation Provisions**

This aspect of the proposal is merely asking for the same rights for a User Proposal as for a Transco Proposal. If the User insists on a change that is clearly not in line with the relevant objectives for assessing changes to the Network Code then Ofgem will presumably not approve the Proposal.

TGP do not agree that the adoption of the Proposal will require extending the timescales for Modification Proposals on a universal basis. If a User has supplied their view of the legal text with the Proposal then they are likely to modify this themselves. 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

TGP recognise that there is a possible disadvantage in allowing unconstrained changes to Proposals without recourse by the proposer to the



relevant objectives or representations received. This Proposal does not seek to introduce this. However to date this has been allowed within Transco proposals. Additionally, there would be an expectation that Ofgem would be uncomfortable approving a proposal which was clearly different to that which had been discussed by the industry.

- **Workstream Guidelines**

TGP consider that it is important for effective operation of panel meetings to ensure that Workstream Chairmen or a representative on behalf of the Chairman attend the Panel. We note that there are relatively few workstreams and this requirement is ultimately subject to Clause 8.3.9. To address Transco's concerns, however, regarding the attendance of Charimen of workstreams that have met infrequently it may be appropriate to seek Panel approval of the non-attendance of a workstream chairmen in reasonable time prior to the Panel Meeting.

- **Greater Potential for disputes on Transco appointments**

Transco have put this concern forward as a potential disadvantage associated with proposal 731. We agree the Workstream Chairmens Guidlenes will result in greater accountability upon the Chairman to ensure appropriate management of Network Code related meetings. Clearly if a candidate is unable to perform within the scope of the guidelines then efficiency of the process should be improved by an alternative candidate that can. Hence the dispute is only likely to arise if Users are concerned that efficient management of the process is likely to be jeopardised.

- TGP believes the legal text supplied with this modification generally reflects the intent of the proposal.
- Comments re how the Proposal better facilitates the relevant objectives and implementation dates have already been made earlier

Should you wish to discuss our response further, please feel free to contact me.

Yours sincerely,

(This message is sent electronically and is therefore not signed)

Steve Ladle
Head of Regulation
Total Gas & Power Limited

Direct: +44 (0) 20 7318 6836
E-mail: steve.ladle@total.com

