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Dear Phil

Modification 0844

Under proposed UNC modification 0844, NGT would be enabled to contract directly with large consumers for reduction in their demand at times of system stress (DSR).

The question has arisen whether the Gas Act 1986 (s.5(1)(c)) would prohibit a consumer from entering or performing such a contract unless it held a gas shipper licence, in other words whether (by the contract) the customer "*arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter*" (Gas Act 1986, s.5(1)(c)).

While we can see why the question might arise, in our view, the answer is that the consumer would not need to be licensed.

In a trivial sense, a reduction in demand is not the 'taking of gas out of' a pipeline system; but our views would apply equally to a case of increase in demand of a consumer.

A shipper is not a 'physical' actor in relation to the System. Whenever gas flows into or out of the system, that is the result of physical action taken by someone (a producer, terminal operator, storage operator, interconnector operator, LNG terminal operator, consumer, etc) whose facilities or premises are connected to the System. But those flows are attributed to (and accounted for as those of) a gas shipper for the purposes of the arrangements reflected in the UNC. That is the nature of the arrangements that Transporters make. These cases do not require that the connected person should hold a gas shipper licence.

The fact that, in some cases, those physical actions are known to or instructed by the Transporter does not alter this. There is a variety of cases where the Transporter may require a variation in gas flows from a physically connected person: for example, provisions in LOPs (local operating procedures) in Network Entry Agreements, Network Exit Agreements (to which a Shipper User is not necessarily a party), combined arrangements such as Interconnection Agreements or Storage Connection Agreements, the Offtake Arrangements Document, and in emergency communications (and historically, in transportation interruption

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arrangements). Those varied gas flows are attributed to the relevant gas shipper, under the arrangements it has made with the Transporter by being a party to the UNC. TPD Section G1.3 contains an archetypal provision of this kind.

The arrangements made by a Transporter and User under the UNC include:

- the basis on which title to gas passes between them (as it flows into or out of the System);
- the liability of the Transporter if it fails to make gas available for offtake, or makes available gas not complying with specification;
- the holding of System Capacity which allows those flows without the User incurring an overrun charge;
- the requirement for the User to nominate those flows, and consequences if it does not;
- the accounting for those flows (for the account of the User) in the commercial balancing regime.

All of these will apply, as between Transporter and Registered User, where a 0844 contract is made and performed between NGT and a consumer. None of these arrangements will bind the consumer. We anticipate that (as with other documents of the kind listed above) the contract with the consumer will make clear that it is the Registered User, and not the consumer, which has those responsibilities and rights, and makes the relevant arrangements with NGT.

In our view the above considerations are sufficient to establish that the consumer is not making an arrangement of the kind prohibited under s.5(1)(c). We have some further observations which are consistent with that conclusion.

- For the purposes of s.5(1)(c), an arrangement does not exist in the abstract. It has to be made, and made by the gas transporter; and so the gas transporter determines what are the arrangements that it makes. (A person could not unilaterally make an arrangement with a gas transporter.) The kind of arrangements that the Transporters make are those in the UNC (and, in theory, in a non-code arrangement of the kind referred to in SLC6 of the shipper licence), in other words, that make Users responsible for gas flows as discussed above.
- The question might arise, could more than one person arrange for the same gas to be taken out of a pipeline system. (Other than jointly, on the same terms, ie those of the UNC.) We think this would be problematic – there could be a doubt as to which of them did, for example if they did conflicting things in or under those arrangements.
- The physical outcomes discussed above will be the subject of arrangements made by shippers (and/or suppliers) with the relevant connected parties, in their own contracts, which will address both physical and commercial issues. Those arrangements are not transportation arrangements – the shipper in entering them is not in any sense representing or binding the gas transporter.

We are content that our advice is made known to the 0844 workgroup, but it is addressed only to NGT and may not be relied on by anyone else.

Yours sincerely



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