

To:

**Cadent Gas Limited
Northern Gas Networks Limited
Scotland Gas Networks plc
Southern Gas Networks plc
Wales and West Utilities Limited**

**Gas Act 1986
Section 23(7)**


**Decision: Modification of the Special Conditions of the Gas Transporter licence
held by the licensees listed above**

1. Each of the licensees to whom this document is addressed is the holder of a Gas Transporter Licence ('the Licence') granted or treated as granted under section 7 of the Gas Act 1986 ('the Act').
2. The Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 26 March 2024 ('the Notice') that we proposed to modify the special conditions ('SpCs') of the Licence by amending SpC 3.20 (Diversions and Loss of Development Claims Re-opener (DIVt)).² We stated that any representations to the modification proposal must be made on or before 23 April 2024.
3. We received three responses to the Notice, all from Licensees, which we carefully considered. We have published the responses on our website.
4. The modifications to the Licence are set out in Schedule 1 of this decision. All respondents were supportive of the proposed modifications in the Notice, therefore no alterations have been made.
5. As set out in paragraphs 4-7 of the Notice, these licence modifications align the scope of the Diversions and Loss of Development Claims Re-opener with the original policy intent, and expand the licence scope to permit the recovery of efficient costs:
 - a. for works that are necessary due to environmental factors, in addition to soil erosion, that are outside of the licensee's control; and
 - b. for alternative solutions with lower lifetime costs than diversions.

¹ The terms "the Authority", "we" and "us" are used interchangeably in this document

² [Statutory Consultation on a proposal to modify Special Condition 3.20 of the Gas Transporter Licence held by the Gas Distribution Networks | Ofgem](#)

6. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 23B of the Act, Rule 5.6 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules³ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 23(10) of the Act sets out the meaning of 'relevant licence holder'.
7. Under the powers set out in section 23 of the Act, we hereby modify the special conditions of the Licence of NGET in the manner specified in attached Schedule 1. The modifications will take effect from 9 July 2024.
8. This document is notice of the reasons for the decision to modify the Licence held by the Licensees as required by section 38A(2) of the Act.



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Nathan Macwhinnie
Duly authorised on behalf of the
Gas and Electricity Markets Authority

14 May 2024

³ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

Schedule 1: Modifications to 3.20.2, 3.20.4, 3.20.6 and 3.20.7 in Special Condition 3.20 of the gas transporter licence held by Cadent Gas Limited, Northern Gas Networks Limited, Scotland Gas Networks plc, Southern Gas Networks plc, Wales and West Utilities Limited.

(New text is double underscored and text removed is struck through)

Special Condition 3.20 Diversions and Loss of Development Claims policy Re-opener (DIV_t)

Introduction

- 3.20.1 The purpose of this condition is to calculate the term DIV_t (the Diversions policy Re-opener term). This contributes to the calculation of the Totex Allowance.
- 3.20.2 The effect of this condition is to establish a Re-opener triggered by the licensee where there are material additional Diversion Costs, reasonable alternative solutions that avoid Diversion Costs, Loss of Development Claims or costs of rectifying or mitigating damage to Network Assets due to adverse environmental factors beyond the control of the licensee ~~from soil erosion~~.
- 3.20.3 This condition also explains the process the Authority will follow when directing any changes as a result of the Re-opener.

Part A: What is the scope of this Re-opener?

- 3.20.4 The licensee may apply to the Authority for a direction adjusting the value of the DIV_t term for any Regulatory Year during the Price Control Period in relation to additional:
- (a) Diversion Costs or the cost of reasonable alternative solutions that avoid Diversion Costs;
 - (b) Loss of Development Claims; or
 - (c) costs of diverting gas assets due to adverse environmental factors.

Part B: When to make an application

- 3.20.5 The licensee may only make an application under paragraph 3.20.4 Between 25 January 2024 and 31 January 2024, and during such later periods as the Authority may direct.

Part C: How to make an application

- 3.20.6 An application under paragraph 3.20.4 must be made in writing to the Authority and:
- (a) specify the Diversion Costs, the cost of reasonable alternative solutions to avoid Diversion Costs, Loss of Development Claims or costs of rectifying damage or mitigating the risk of damage to Network Assets due to adverse environmental factors beyond the control of the licensee ~~from soil erosion~~ that have led to the application;

- (b) set out the adjustments to the value of the DIV_t term that the licensee is requesting and the Regulatory Years to which that adjustment relates;
- (c) explain the basis of the licensee's calculation of the proposed adjustments to the value of the DIV_t term;
- (d) if the application relates to Diversion Costs, include engineering justification statements that the Diversion Costs, are efficient and unavoidable;
- (e) if the application relates to reasonable alternative solutions to avoid Diversion Costs, these must be at lower lifetime cost than a Diversion and provide the equivalent consumer benefits as a Diversion would;
- (f) if the application relates to Loss of Development Claims, demonstrate that reasonable challenge has been made to the basis for, and quantum, of any Loss of Development Claim; and
- (g) include such detailed supporting evidence, including Improvement Plans, risk mitigation approaches, cost benefit analysis and impact assessments, as is reasonable in the circumstances.

3.20.7 An application under paragraph 3.20.4 must:

- (a) Be confined to Diversion Costs, the cost of reasonable alternative solutions to avoid Diversion Costs, Loss of Development Claims or costs of rectifying damage or mitigating the risk of damage to Network Assets due to adverse environmental factors beyond the control of the licensee ~~from soil erosion~~ that were incurred or are expected to be incurred on or after 1 April 2021;
- (b) take account of any allowed expenditure, which can be avoided as a result of the change; and
- (c) relate to costs incurred or expected to be incurred that exceed the Materiality Threshold.

Part D: What process will the Authority follow in making a direction?

3.20.8 Before making a direction under paragraph 3.20.4 the Authority will publish on the Authority's Website:

- (a) the text of the proposed direction;
- (b) the reasons for the proposed direction; and
- (c) a period during which representations may be made on the proposed direction, which will not be less than 28 days.

3.20.9 The direction will set out any adjustments to the value of the DIV_t term and the Regulatory Years to which that adjustment relates.

Schedule 2: Relevant Licence Holders⁴

Cadent Gas Limited

Northern Gas Networks Limited

Scotland Gas Networks plc

Southern Gas Networks plc

Wales and West Utilities Limited

⁴ <https://www.ofgem.gov.uk/publications/list-all-gas-licensees-including-suppliers>