

# NOTICE UNDER S23(3) OF THE GAS ACT 1986

The Gas and Electricity Markets Authority ("**the Authority**") hereby gives notice pursuant to section 23 (3) of the Gas Act 1986 ("**the Act**") as follows:

1. The Authority issued a notice under section 23(3) ("**the Original Notice**") on 12 April 2002 consulting on its proposals to modify the conditions of the gas transporter licence granted to Transco plc ("**Transco**") treated as granted under section 7 of the Act in two respects, more particularly detailed in Part A and Part B of the Original Notice and summarised below:

## Part A

- (1) by amending the following licence condition:
  - (a) standard condition 6: Emergency Services and Enquiry Service Obligations by introducing a new paragraph, paragraph 23 (amendments are shown in bold and italicised); and
- (2) by substituting for Special Condition 9C: Restrictions on prices for transportation, metering and meter reading services the following licence conditions:
  - (a) Special Condition 26: Prohibited procurement activities;
  - (b) Special Condition 27: Licensee's procurement and use of system management services;
  - (c) Special Condition 28A: Revenue restriction;

- (d) Special Condition 28B: Revenue restrictions: Part I a: NTS transportation owner activity revenue restriction, Part I b: LDZ transportation activity revenue restriction, Part II: NTS system operation activity revenue restrictions;
- (e) Special Condition 29: Allocation of revenues and costs for calculations under the price control;
- (f) Special Condition 30: Supplementary provisions of the revenue restrictions;
- (g) Special Condition 31: Restriction of prices in respect of tariff capped metering activities;
- (h) Special Condition 32: Non-discrimination in the provision of metering activities;
- (i) Special Condition 33: Information to be provided to the Authority in connection with the revenue restriction;
- (j) Special Condition 34: Licensee's methodology for determining incremental entry capacity volumes;
- (k) Special Condition 35: NTS performance reporting;
- (l) Special Condition 36: LDZ incentive scheme and performance reporting;
- (m) Special Condition 37: Exit code statement; and
- (n) Schedule A: NTS output measures for the price control,

which, as stated in a press release by the Authority dated 22 February 2002 and, in accordance with their terms, would be deemed to take effect from 0.00 hours on 1 April 2002.

**Part B:**

- (1) by amending the following licence conditions:
  - (a) standard condition 4E: Requirement to Enter into Transportation Arrangements in Conformity with Network Code, by introducing a new paragraph, paragraph 5 (amendments are shown in bold and italicised); and
  - (b) standard condition 9: Network Code, by amending paragraphs 5(b) and 6(a) of that condition and by introducing a new paragraph, paragraph 16 (amendments are shown in bold and italicised).
2. The reasons why the Authority proposed to make these licence modifications and their effect are set out in the following documents published by the Authority:

**Part A**

- (1) **TO proposed modifications** (including NTS revenue restriction, LDZ revenue restriction, NTS performance measures, LDZ incentive scheme and performance measures) **and metering modifications**:
  - (a) Review of Transco's price control from 2002: Initial thoughts February 2001.
  - (b) Review of Transco's price control from 2002: Draft proposals June 2001.
  - (c) Review of Transco's price control from 2002: Final proposals September 2002.
  - (d) February 2002 document: Licence Fee Cost Recovery Principles.

- (e) Transco Price Control and NTS SO incentives 2002-07: Explanatory Note to accompany the S23 Notice of Proposed Modifications to Transco's Gas Transporters Licence April 2002.

**(2) SO proposed modifications:**

- (a) September 2001 –Transco's National Transmission System – System Operator incentives 2002-7: Initial proposals.
- (b) December 2001 –Transco's National Transmission System – System operator incentives 2002-7 : Final proposals.
- (c) Transco Price Control and NTS SO incentives 2002-07: Explanatory Note to accompany the S23 Notice of Proposed Modifications to Transco's Gas Transporters Licence April 2002.

**Part B**

**(1) Information disclosure and the modifications to enable third parties to raise Network Code modifications:**

- (a) February 2001 – The new gas trading arrangements – Further reform of the gas balancing regime – consultation paper.
- (b) December 2001 –Transco's National Transmission System – system operator incentives 2002-7 Final proposals.
- (c) Transco Price Control and NTS SO incentives 2002-07: Explanatory Note to accompany the S23 Notice of Proposed Modifications to Transco's Gas Transporters Licence April 2002.

To assist with consideration of the licence modification proposals specified in the Original Notice, the Authority prepared an explanation ("**the Explanatory Note**") of how the proposals contained in the draft licence modifications set out in the Original Notice have developed from those outlined in the documents referred to above. This document was also published on 12 April 2002. The Explanatory Note is referred to in paragraph 2 Part A (1)(e) and (2)(c) above and paragraph 2 Part B (1)(c) above.

3. The effect of the proposed licence modifications were described in paragraphs 3 and 4 of the Original Notice but are summarised below:

**Part A**

- (i) to introduce new price controls with effect from 1 April 2002 on Transco's NTS and LDZ transportation businesses;
- (ii) to introduce maximum tariff caps in respect of a number of Transco's metering activities;
- (iii) to introduce a non-discrimination condition to ensure that Transco continues to be subject to prohibitions on undue discrimination and preference in the provision of its metering activities, particularly in respect of charging;
- (iv) to introduce individual price controls in respect of the transmission asset owner ("TO") and system operator ("SO") functions of Transco;
- (v) to introduce new incentives for the SO;
- (vi) to introduce a new obligation on Transco to operate the National Transmission System ("NTS") in an efficient, economic and co-ordinated manner;
- (vii) to introduce a new condition prohibiting certain trading activities other than for the purposes of balancing management and constraints management, and requiring the production of statements on procurement, use of system management services and system management services adjustment data methodology; and
- (vii) to introduce various ancillary provisions to govern the manner in which Transco allocates revenues in respect of its various price controls, to monitor Transco's performance under the SO incentives, to monitor Transco's performance as regards the environment in respect

of the NTS and LDZ, to monitor the delivery of LDZ outputs and to introduce an incentive scheme in respect of the LDZs and facilitate the development of an expenditure monitoring framework.

## **Part B**

- (i) to introduce a new condition to disclose information relating to the operation of the NTS; and
  - (ii) to introduce new provisions that enable persons who are not shippers to propose modifications to the Network Code.
- 4. The Authority gave a copy of the Original Notice to the Secretary of State and did not receive any objection or direction not to proceed.
- 5. Prior to the close of the consultation period in respect of the Original Notice, the Authority received 24 responses (excluding Transco's response) none of which were marked as confidential. No responses were withdrawn. The responses have been placed in the Ofgem Research and Information Centre.
- 6. Since that time, the Authority has carefully considered the responses received to the Original Notice. In light of responses received and following further discussions with Transco and other interested parties, the Authority has identified a number of drafting changes to the proposed licence modifications consulted upon under the Original Notice.
- 7. In summary, the changes identified fall within five broad categories (this description is not exhaustive and some changes may fall into one or more of these categories):
  - 1. Correcting typographical errors.
  - 2. Adding in missing words (to ensure the use of a defined term for example) or clarifying the intent expressed in the Original Notice and the Explanatory Note.

3. Restructuring of some drafting, notably in respect of the incremental entry capacity release statement to deliver the intended effect of the Original Notice and the Explanatory Note.
  4. Algebraic changes to produce the effect set out in the Original Notice and the Explanatory Note.
  5. Consistency changes.
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8. Several respondents to the Original Notice suggested that if the Authority decided to modify the proposals in light of consultation responses there should be a further statutory consultation. The Authority has considered this and has concluded that it would be possible for it to direct the modifications to be made under section 23 (6) of the Act without a further statutory consultation. The changes identified fall within section 23(6) of the Act and the terms of the Original Notice and as such the Authority has the power to direct that the modification be made. However, the Authority considers that, in recognition of concerns expressed by respondents, there should be a further limited consultation on this occasion. No inference should be drawn from this decision that there would be further consultation by the Authority in similar situations in the future.
  9. As mentioned above the decision to reconsult is limited. The Original Notice is in two parts Part A which generically consulted on proposed licence modifications in respect of the price control and Part B which consulted on the proposed licence modifications to address disclosure of Transco system operation information and the ability of third parties to raise modifications to Transco's Network Code. Having regard to these responses received, the Authority has decided that the subject matter of this Second Notice will be restricted to Part A of the Original Notice and is not consulting again on the proposed modifications contained in Part B. In the Log of Changes ("**the Log**") prepared by the Authority to explain the changes identified (which has been published today), two changes to the Part B proposals are identified (no's 1 and 2 in the Log). These changes are however to correct incorrect cross references and do not require further consultation. It is important to note that in deciding to reconsult on Part A only, the Authority has not reached a decision on

the licence modifications proposed under Part B. No decisions will be made by the Authority in respect of these modifications until after the close of the consultation under this Second Notice. However, in the interest of completeness we have included in this consultation for **information purposes only** the proposed licence conditions referred to in Part B of the Original Notice. For the avoidance of doubt, these **do not** form part of this statutory consultation process.

10. In light of the above, the Authority has decided to consult again on the proposed changes to Transco's price control as detailed in Part A of the Original Notice and has today published this notice under section 23(3) of the Act ("**the Second Notice**"). The revisions to the Original Notice are detailed in the Log published today by the Authority. Also relevant is an open letter to industry participants published today. The documents referred to in the Original Notice are also relevant to explaining the intended effect of the proposed modifications.

11. Copies of the Original Notice, the proposed licence modifications issued pursuant to it, the Explanatory Note that accompanied the proposed licence modifications and this Second Notice (including the modifications annexed to this Notice, the open letter to industry participants published today and the Log) are available (free of charge) from the Ofgem Research and Information Centre (telephone 020 7901 7003/7004) or on the Ofgem website at ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).

12. Any representations or objections to the proposed licence modifications (incorporating the changes identified in the Log) must be made before **30 August 2002** and should be addressed to:

Kyran Hanks  
Director – Gas Trading Arrangements,  
9 Millbank,  
London.  
SW1P 3GE.

Or by e-mail to: [kyran.hanks@ofgem.gov.uk](mailto:kyran.hanks@ofgem.gov.uk)



