



**Response to Consultation Document**

*Initial thoughts on restructuring Transco's Gas Licences*

## **Introduction**

United Utilities welcomes the clarification of the high level issue provided in the consultation. However, whilst we appreciate that this is an initial consultation and that the timetable is driven by Transco's commercial requirements we do have reservations regarding the process. In particular we note that changes to the GT Licence may be made at three separate stages of the process:

- The Section 23 notice.
- The Section 8AA notice.
- Standard Condition 29 (Disposal of Assets)

The changes at the Section 8AA stage are of particular concern since they potentially involve significant change on points of important principle. Not only will we not see the detailed drafting until late in the process but there are still no clear decisions on the detail of some of these principles. The Offtake Code and its contents is the most important example.

The dangers of not having detailed legal drafting until late in the process are:

- Issues may not become apparent until a late stage providing little time to ensure correct resolution.
- Late decisions in one area may unravel an earlier decision elsewhere or create problems which are not evident until post sale.

Our response to the consultation document is subject to the following caveats:

- Given the uncertainty regarding the detail of the final GT Licence we reserve the right to alter or amend our stance in the light of subsequent new licence conditions or alterations to existing ones.
- Ofgem has sought a response to their current position on every licence condition. At this stage we have restricted our comments to those areas that we consider to be key issues. The fact that we have not specifically commented on an individual condition should not be taken as implying we either agree or disagree with Ofgem's position.

## **Restructuring Transco's GT Licence**

### **Private Collective Licence Modification (CLM) Procedure**

It is important that all four major gas transporting companies are treated equitably under the private CLM procedure. One company should not find itself being placed in a potentially different position from another. Consequently we believe the 20% thresholds (under the statutory process) based on number of licensees and volumes of gas distributed should be applied to the private CLM procedure. If any owner is granted multiple licences then the threshold should be revised such that the balance between the four owners is maintained.

### Proposed structure of the amended licence

We fully appreciate that Ofgem has had to devise a structure to accommodate the DN sales within the constraints of existing legislation. However, this has resulted in a complex licence structure. We would urge Ofgem to look for any future opportunity to influence legislation and secure the establishment of separate gas transmission and distribution licences that reflect the new structures in the gas industry. This would be of benefit to all parties.

### **Key Issues**

#### Transportation charging arrangements

We support in principle the proposal that the Joint Office should have responsibility for managing modifications to the distribution charging arrangements. In this context it is important that details of the Joint Office including roles, responsibilities and resources are properly developed in a timely manner. It is however essential that this will not preclude the development of different charging methodologies where the Authority is satisfied that this is appropriate.

We also recognise the merit of limiting the frequency of changes to use of system charges to once a year. However, it is important that this is a “reasonable endeavours” obligation recognising that other obligations in the licence may require the DN to make more frequent changes.

Ofgem also refers to LNG under this heading, an issue that is clearly impacted by a number of conditions throughout the licence. We concur with Ofgem’s view expressed at DISG that conditions relating to LNG should be dealt with by Special Conditions in the NTS GT Licence only.

#### Emergency Service Co-ordination

We believe that the overriding principle is that there should be no duplication of obligations between the Safety Case and ancillary documents and the GT Licence. It is essential that there is absolute clarity of roles and responsibilities and obligations regarding safety. Our understanding is that many of the issues discussed in this section are in fact already covered in the Safety Case and ancillary documents and to this extent we would not want to see duplication in the licence.

For the sake of completeness we detail below our position on the general principle of each issue but stress these are subject to the comments above.

#### Emergencies at boundaries

Unless the original notification is manifestly incorrect we believe it is important that DNs should attend and make safe any DN emergency of which they are notified regardless of the network on which it transpires that the incident has actually occurred.

We would expect the standard of work to be exactly the same as if the DN were working on its own network. Whilst we would anticipate liability for physical damage caused by negligence, economic and consequential loss should be excluded. We would also expect indemnities against third party claims. As with the existing Special Condition 19 we would not expect a DN to have to employ additional men or equipment to meet this condition.

#### First response emergency service to IGTs

In principle we do not have any objection to extending the current obligation where a major loss of supply has occurred to any emergency. The make safe service should be at reasonable commercial rates and subject to the same liabilities and caveats discussed above.

We would not support any obligation either in the licence or in the Safety Case and ancillary documents to provide IGTs with an ongoing repair and restoration service. These are clearly competitive services that the IGT can source from a number of companies.

#### First response emergency service to NTS

We see no reason why this should be a regulated service. Transco can clearly provide it themselves. If they choose not to then it should be the subject of a commercial arrangement.

#### System Operator Managed Services Agreement

Our view remains that, at least for an interim period, this is a critical service for the DN and any failure or disputes in this area may have a significant impact on customer's interests. It is also a service that for this period can only be obtained from a single monopoly provider. We fully support Ofgem's position that nothing should be done which perpetuates the SOMSAs but we believe that Ofgem should establish a limited degree of regulatory oversight while the SOMSAs are in place, for example to resolve disputes. This could take the form of a time-limited obligation on Transco to provide the service on a non-discriminatory basis on reasonable terms.

#### Network Code and Offtake Arrangements

As we have previously stated we do not believe it is appropriate to include the Offtake Code in the UNC. The Offtake Code is a transporter to transporter (together with other direct NTS connects) agreement and should be a separate agreement from the UNC. We believe the establishment of overarching governance arrangements applying to both the UNC and the Offtake Code offer a solution to many of the expressed concerns.

We are disappointed at the length of time it is taking to resolve this issue. Also, whilst the document states that further work is required to analyse the regulatory issues, it is unclear to us what this work is and who is doing it. We are keen to assist either through DISG or directly.

We do not believe that a new objective should be inserted into the UNC regarding ‘efficiency in the administration of arrangements’. We believe this is unnecessary duplication as the price regulated activities of the DN already create a strong incentive to ensure the efficient operation of the joint office and the agency. We are also not convinced that the analogy with the Balancing System Code is correct.

We strongly disagree with the proposal that the functions of the agency should be detailed in the UNC. There are two major concerns to this proposal:

- Many of the functions that the agency will perform on day 1 will be on an interim basis. DNs may well determine that certain of these functions can be performed more efficiently in a different manner. We would not wish to see such innovation stifled by embedding the existing agency functions in the UNC.
- After much debate at DISG we appear to have reached a position where it is broadly accepted that it is inappropriate to include on the board of the agency individuals from companies or organisations who would be voting on the role of the agency without incurring any financial consequences of their decision. Having arrived at this position it seems perverse to then propose that the functions should be included in the UNC and subject to its modification procedures thus giving a significant power to groups with no financial responsibility to impose additional costs and liabilities on the agency.

#### Price Controls and Incentive Arrangements

We note that Ofgem will be publishing a separate consultation document in November on this topic. At this stage therefore our only comment would be to reiterate our concerns regarding timetable and process.

#### Pipeline Security Standards

As previously stated we believe it is essential that the security standard should continue to apply to both the NTS and the DNs.

#### **Miscellaneous**

Amended Standard Condition 29 – Disposal of Assets. In principle we have no objection to Ofgem’s proposal to replicate the provisions of the electricity distribution licence into the gas transporter licence. However, during the transition to separate owners, Transco will provide control centre activities under SOMSA to the new owners for a short period. When Transco sells the licensees then this could be judged as the licensee relinquishing operational control of a relevant asset. We would appreciate confirmation and discussion as to how these arrangements will be treated in the context of the new licence condition.

Amended Standard Condition 30 – Regulatory Accounts. We fully endorse Ofgem’s position that when a licensee conducts more than one DN business, information for comparative performance is provided separately in relation to each DN. This is essential to ensure robust comparative analysis across DNs.

Standard Condition 33 – Designated Registrar of Pipes. We see no benefit to the industry in the Authority giving a direction under this condition. We believe the status quo should be maintained.

Amended Standard Condition 39 – Restriction on Use of Certain Information and the independence of the Transportation Business. We believe that it is essential to ensure that there is no undue discrimination by the NTS between the RDN and IDN businesses. If Ofgem believe that this condition or any other conditions may require modification to deal with competition issues arising from our ownership of a DN then we would very much welcome the opportunity to discuss these in detail with Ofgem.

Special Condition 4 – Investment Grade Credit Rating as Issuer of Corporate Debt. We support the proposed modification to include Fitch, Dominion and other credit rating agencies as well as Standard & Poor's and Moody's.

Special Condition 26 – Prohibited Procurement Activities. We support the proposed amendments

Special Condition 27 – Licence procurement and use of system measurement services. We support the new licence condition not to prejudice each other's systems.

### **New Licence Conditions**

We note that Ofgem currently does not consider that it has the clarity to specify the potential new conditions that will cover the gateway requirements. It is clearly essential that this clarity is obtained as quickly as possible and we are fully committed to contributing to this achievement.

### **Conclusion**

We hope that these comments are of assistance in addressing some of the licence issues going forward. We recognise that the difficulties with the current process are to a large degree outside Ofgem's control. We are committed to working with Ofgem and the industry to try and achieve clarity on the final licence as soon as possible. We reiterate our offer to meet with Ofgem or provide them with any information in respect of conditions that they consider they may need to modify in the light of our consortium's ownership of a DN.