

National Grid Transco – Potential sale of gas distribution network business

Publication of Ofgem’s initial drafting of proposed new “private” Collective Licence Modification licence condition

Background

On 2 September 2004, Ofgem published a consultation document on the proposed modifications to Transco plc’s (Transco) existing gas transporters (GT) licence and, if granted, each new additional GT licence in the context of the proposed sale by Transco of one or more of its local gas distribution networks (DNs).¹ The consultation document stated that Ofgem would review the need to modify Transco’s existing GT licence and, if granted, the new additional GT licences as part of the DN sales process at three separate stages:

- ◆ the section 23 notice;
- ◆ the section 8AA consent; and
- ◆ as part of the consent to disposal of the relevant DN assets under the Amended Standard Condition 29 (Disposal of Assets) of Transco’s existing GT licence.

Following the publication of the informal consultation document, National Grid Transco plc (NGT) provided to Ofgem (for publication) first drafts of the proposed licences for the National Transmission System (NTS) and the DNs. These draft licences based on the proposed structure set out in the consultation document were published on Ofgem’s website on 15 September 2004.

The informal consultation document set out Ofgem’s proposal to introduce a “private” Collective Modification Procedure (CLM) in respect of Standard Special Conditions in NTS and DN-GT licences. The document explained that, as a result of the (potentially extensive) modifications to Transco’s existing GT licence and, if granted the new additional GT

¹ National Grid Transco – Potential sale of gas distribution network businesses. Initial thoughts on restructuring of Transco plc’s Gas Transporter Licences. Consultation Document. September 2004. 215/04.

licences, the current Standard Conditions in these licences would, in the main, need to become Amended Standard Conditions in order to reflect the issues raised by the proposed sale. In turn, this would mean that the statutory CLM procedure, contained in the Gas Act, would cease to apply to the Standard Conditions to the extent that they are modified. Given the potential scale of the modification, Ofgem considers that this would, in practice, make the statutory CLM procedure largely unavailable.

In the absence of such a CLM procedure, whenever Ofgem proposed a modification to a Standard Condition of a NTS or DN-GT licence it would need to obtain the individual consent of each licence holder. This could result in the new additional GT licences diverging and becoming inconsistent with other licences which could potentially cause detriment for customers. A more detailed explanation of this issue and the proposed mechanics of the “private” CLM is set out in the informal consultation document.

Ofgem is still considering the views of respondents to the informal consultation document and will be setting out further views on this issue in the consultation document accompanying the section 23 notice due to be published in November. However, in order to facilitate discussion and transparency we considered it appropriate to place a draft of the proposed condition on our website. For clarity, Ofgem is not intending to introduce these conditions as part of the section 23 stage but, subject to consideration of respondents’ views, as part of the section 8AA consent process.

In publishing the draft licence conditions, it is important to make clear that there can be no expectation on the part of NGT, Transco, potential DN purchasers or any other interested parties either as to what the Authority's final decision in relation to the proposed transaction may be, or as to the regulatory framework which may be implemented if the Authority consents to the proposed transaction.

The form and content of the draft licence conditions are not binding on the Authority. The publication of the conditions by Ofgem does not mean that the Authority endorses the drafts. Publication of the draft licence conditions by Ofgem is not to be construed as granting any rights or imposing any obligations on the Authority. The Authority’s discretion in this matter will not be fettered by the contents of the draft licences.

As explained in the consultation document, the proposed transaction is not a regulatory initiative but a commercial decision taken by Transco. Accordingly, for the avoidance of doubt the proposed modifications as set out in the draft licences will not apply to GT licences held by independent GTs and will apply only to Transco's existing GT licence, and, if granted, the additional new GT licences.

Attachments

The draft CLM licence conditions are attached. It is proposed that the condition will be placed in the licences of all NTS and GT-DNs.

Way forward

Ofgem requests that any comments on the attached draft CLM licence conditions are provided to Tracey Hunt (tracey.hunt@ofgem.gov.uk) by 29 October 2004. Industry participants will have the opportunity to put forward any further comments they may have on the CLM proposals at the Development and Implementation Steering Group on 2 November.

Ofgem will take this feedback into account when it develops further proposals to be published in its November licence consultation document. If you wish to discuss any aspect of this paper, Jess Hunt (ph. 0207 901 7431) would be pleased to help.