

### S8AA Licence drafting - issues list

	ISSUE	ORIGIN	ACTION / REPLY
	<p>“Maintenance of the rights of existing parties to propose modifications to gas transportation arrangements.</p> <p>Under the existing network code shippers are able to propose changes to market rules from ‘beach to meter’ this includes NTS exit and offtake arrangements or any other arrangements that currently come under the network code. These rights should not be diminished following designation of the UNC or SFCs”.</p>	Eon note to Ofgem 22.10.04	
	<p><b>“Legality of the proposed mechanism for establishing the private CLM procedure</b></p> <p>Given different legal views on whether Ofgem has powers under 7(B) 7(b) of the Gas Act to introduce the private CLM procedure without reference to statutory procedures, we believe it would be safer and more prudent for Ofgem to accept the restrictions of having to gain individual approval from each licensee. We cannot accept that this would necessarily result in inefficient fragmentation of the market arrangements given that in instances where permission was not</p>	Eon note to Ofgem 22.10.04	

	<p>forthcoming Ofgem can a) choose not pursue a particular modification across <u>all</u> the relevant licencees or b) alternatively get the Competition Commission to rule on the matter”.</p>		
	<p>as a general observation and as I tried to articulate at the end of the last DISG meeting (DISG 24), the drafting is becoming increasingly confusing! For example:</p> <p>The approach taken to how existing special condition 26 and 27 will be treated post DN-sale is inconsistent. On the one hand, existing special condition 27 has been redrafted into a DN-only special condition (although I expect it is meant to be a DN-only Standard Special Condition ....) and a separate NTS-only special condition (arguably this could be a NTS only Standard Special Condition) where the NTS Condition contains all of that contained in the DN condition plus the extra bits associated with the NTS activities. On the other hand, the way that existing Special 26 has been treated is entirely different. That is, Special Condition 26 has been drafted so that it is a Standard Special Licence condition that applies to NTS and DNs, which is then supplemented by a NTS-only special condition to cover the additional bits of existing Special condition 26 that applies only to the NTS.</p>	SSE – note to Ofgem	

	<p>Clearly, the approach that has been adopted for existing 27 is much "cleaner" and I believe more transparent and less confusing for all concerned (even if it does result in a bit of duplication).</p> <p>The nomenclature of the proposed drafts is not clear - see above comment for an example where the title give the DN-only Special Condition 27] should I expect mean Standard Special Condition.</p> <p>It appear that in the main, only existing wording that has been deleted has been flagged up - for ease of process and review, I think it is important that any new/inserted text is also flagged.</p>		
	<p>"Standard Special Condition A [ ] Prohibited Procurement Activities. NTS and DN Condition]" and Special Condition B [ ] [Additional ] Permitted procurement activities</p> <p>The drafting of these conditions and the way in which they are meant to work together in respect of the NTS obligations is very unclear. We are unsure that together these licence conditions replicate the provisions of the existing special condition in respect of the NTS.</p> <p>It appears that the current drafting of the NTS/DN condition would mean that the prohibition set out in paragraph one does not cover the NTS specific activity of "balancing trades". This has arisen due to</p>	SSE – Note to Ofgem	

	<p>the replacement of "transportation commodities" with "capacity rights" in the NTS/DN condition and the omission of this same paragraph referring only to "balancing trades" from the NTS-only condition.</p> <p>It appears that "Transportation System" should be a defined term in each of these condition "capacity rights" in the NTS/DN condition could be amended to include the words "where applicable" so that it reads "... Network Code to, where applicable, input up to a given volume..." since in general the DN is not associated with the input of gas to the system.</p>		
	<p>Special Condition B [ ] . Licensee's Procurement and Use of System Management Services. DN only Condition. We believe this should be a Standard Special Condition A In light of the above comment, references to "this Special Condition" should we believe refer to "this Standard Special Condition". More generally, we believe that the proposed DN obligations Associated with this condition are unnecessarily onerous and will result in additional unforeseen auditing and reporting costs not previously associated with DN activities. We believe that in the main, the existing special condition relates primarily to NGT's NTS associated activities.</p>	SSE – note to Ofgem	

	<p>It is obviously important given the serious implications for a transporter if they are in breach that licence conditions are clear as to the obligations which they are imposing. These obligations need, in circumstances such as are envisaged by these clauses, to be capable of dissemination throughout the organisation in a manner which details specific unambiguous guidelines.</p> <p>I therefore have a concern with the first paragraph in that it is not clear to me what 'reasonable and prudent' means in the context of 'affecting' the 'planning, development, maintenance and operation' of other transporters. I not sure why 'affecting' is of itself considered to be bad. It is also not clear what steps a transporter has to take either to understand another transporters 'planning, development maintenance and operation' or to make known his own.</p> <p>Clearly there are numerous areas where it will be essential that transporters co operate with each other and these should be covered in specific agreements or codes of practice. If it is considered desirable to have some form of generic obligation then I believe it would be preferable to have reference to such agreements and codes of practice.</p> <p>With regard to paragraph 2 I believe this would frustrate what I understand to be one of the key</p>	CKI/UU note to Ofgem 8.11.04	
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	<p>objectives of the DN sales process which is the development of innovative and more efficient and economic solutions by the new entrants.</p> <p>A DN may decide that as an alternative to buying exit capacity from Transco it will invest in its own system or enter in to new demand management agreements with its customers. Booking less exit capacity would arguably make the NTS less efficient on day one and in the longer term could make it less economic. As currently drafted the consequence of a DN managing its system in a more efficient economic manner would be to put it in breach of its licence. Clearly that is not the intent but I think there is a danger it is the consequence.</p> <p>Finally I not sure why gas quantity has been singled out in paragraph 3 as meriting a clause of its own. I imagine there are a raft of areas where it is important that transporters do not give false impressions to each other as to the true position.</p>		
	ASC4A Charging gas shippers – suggest move to NGC version : “at all times” is too onerous	Ofgem; DISG 22	
	Network Code Condition – para 17 requires amendment to reflect systems that are established	DISG 22	

	following set up i.e. the obligation is ongoing		
	Joint Governance arrangements – Add requirement for JGA to be published	DISG 22	
	Independent market for balancing – needs to reflect requirement for independence from NGT's GTs	DISG 22	