

S8AA Licence drafting - issues list v2.1 03.12.2004

	ISSUE	ORIGIN	ACTION / REPLY
1	<p>Want confirmation that all arrangements which can currently be modified by shippers, will continue to be modifiable at the instigation of shippers.</p> <p>["Maintenance of the rights of existing parties to propose modifications to gas transportation arrangements. 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". – delete ?]</p>	Eon note to Ofgem 22.10.04	<p>(given in earlier DISGs and confirmed in DISG 25) :</p> <p>There are two distinct categories of rules :</p> <ul style="list-style-type: none"> • Rules in which shippers have a commercial interest will be capable of modification at shippers' instigation • Rules that are operator to operator provisions (currently all within Transco plc) will be set out in bilateral contracts, ancilliary to UNC, and will not be capable of modification by shippers (such as capacity planning and operational flows). However, if a change to a commercial rule necessitated a requirement to revise an operator to operator rule, then this will be required to be done.
2	Challenge to the legality of establishing a private CLM procedure.	Eon note to Ofgem	Reply at DISG 23 : Ofgem has taken external legal advice and is confident that it is acting

	<p>["Legality of the proposed mechanism for establishing the private CLM procedure</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 forthcoming Ofgem can a) choose not pursue a particular modification across <u>all</u> the relevant licensees or b) alternatively get the Competition Commission to rule on the matter". – delete]</p>	22.10.04	<p>within its powers in establishing private CLM procedure.</p> <p>It is important to note that this requires the consent of the licence so apparent concerns that this might be unilaterally imposed in other licensees are not substantiated.</p> <p>DISG and industry members who wanted to offer a contrary argument were told that they need to present their contrary arguments.</p>
3	<p>Structure and categorisation of licence conditions is confusing. The approach taken to how existing special condition 26 and 27 will be treated post DN-sale is inconsistent.</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</p>	SSE – note to Ofgem	<p>Two different approaches have been taken because this was thought the best way to minimise changes. For consistency, the approach taken to SpC 26 will be applied to SpC 27.</p>

	<p>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> <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) – delete ?]</p>		
4	<p>The nomenclature of the proposed drafting is not clear, all new/inserted text should be marked up.</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</p>	SSE – Note to Ofgem	Noted - NGT will in future label and change mark

	review, I think it is important that any new/inserted text is also flagged.]		
5	<p>Prohibited and permitted procurement activities – clarify the drafting, in particular with respect to obligations on NTS.</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>	SSE – Note to Ofgem	
6	<p>Prohibited and permitted procurement activities – prohibition does not appear to cover the NTS activity of 'balancing trades'.</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 the replacement of "transportation commodities" with "capacity rights" in the NTS/DN condition</p>	SSE – Note to Ofgem	

	and the omission of this same paragraph referring only to "balancing trades" from the NTS-only condition.]		
7	It appears that "Transportation System" should be a defined term.	SSE – Note to Ofgem	
8	<p>In the NTS condition “capacity rights” could be supplemented with “where applicable” since DNs are not associated with the input of gas into the system.</p> <p>[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>	SSE – Note to Ofgem	
9	<p>Licensee's Procurement and Use of System Management Services – Should be Standard Special Condition A since it is DN only.</p> <p>Note that the DN obligations appear onerous.</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"</p>	SSE – note to Ofgem	

	<p>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>		
10	<p>a) Require clarity on 'reasonable and prudent' and the steps required to disseminate and understand respectively the transporter's own plans those of other transporters.</p> <p>b) Clarification on why gas quantity has been singled out as an important issue.</p> <p>c) Suggest defining specific requirements for transporter cooperation in a code of practice.</p> <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</p>	<p>CKI/UU note to Ofgem 8.11.04</p>	<p>DISG 25 : This is based on shipper licence condition.</p> <p>The base case is that shippers can comply with reasonable and prudent – so why can't DNs ?</p> <p>DISG members invited to write stating any comments they have on why Dns cannot comply.</p>

	<p>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>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>		
11	<p>Paragraph 2 might conflict with the development of innovative and efficient solutions by new owners.</p> <p><i>[RR – I'm not sure what this refers to]</i></p> <p>[With regard to paragraph 2 I believe this would frustrate what I understand to be one of the key objectives of the DN sales process which is the development of innovative and more efficient and economic solutions by the new entrants.]</p>	CKI/UU note to Ofgem 8.11.04	

12	<p>A DN managing its own system may result in a less economic system as a whole, through it finding alternatives to buying NTS exit capacity.</p> <p><i>RR – this might be the same point as above, but as a specific example? I don't have the full context]</i></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>	CKI/UU note to Ofgem 8.11.04	
13	ASC4A Charging gas shippers – suggest move to NGC version : “at all times” is too onerous.		This is consistent with NGC’s licence and DISG actioned to provide reasons why a lesser requirement would be more
14	Network Code Condition – para 17 requires amendment to	DISG 22	

	reflect systems that are established following set up i.e. the obligation is ongoing.		
15	<p>Network Code</p> <p>a) ASC 9 – clarify who will discharge each obligation (ie each DN or NTS?).</p> <p>b) Request draft of CSA agreement and Statement of Common Systems.</p> <p>c) Request draft of JGA agreement.</p> <p>[Para 16 says sensible things about the various provisions under this paragraph being done on behalf of all transporters. The words at the beginning and the end taken together do not specify which licensee – is this particular term to be in all GT licences, in which case there is ambiguity over who will discharge each obligation, or is it intended to be in only one licence (presumably NGT's)?.</p> <p>Para 17 mentions the Statement of Common Systems and the CSA Agreement. Are there any drafts or outlines of these documents available?</p> <p>Para 17 mentions the Statement of Common Systems and the CSA Agreement. Are there any drafts or outlines of these documents available?]</p>	Macquarie (by email 2/12/04)	

16	ASC9 – Network Code Independent market for balancing applies to NTS only	Macquarie (by email 2/12/04)	
17	Independent market for balancing – needs to reflect requirement for independence from NGT's GTs.	DISG 22	
18	Joint Governance arrangements – Add requirement for JGA to be published.	DISG 22	
19	<p>Joint Governance Arrangements</p> <p>a) (Old ASC9) Sub-Condition 2(b) – clarify the term 'co-ordination'.</p> <p>b) (Old ASC4A) – clarify who will be responsible for the consultation (JO or the DN?).</p> <p>[In sub-condition 2 (b), compliance with the Joint Governance Arrangements includes the term 'co-ordination'. Is there any further detail on what this means, and in particular, in relation to conditions such as (old) ASC4A (2), will the Joint Office or the DN be responsible for the consultation – who will do what in that regard?]</p>	Macquarie (by email 2/12/04)	
20	Charging ASC4A – prefer one change in charges per year and one	Macquarie (by email	

	<p>change in methodology per year.</p> <p>[With regard to the query posed as to the number of times that charges can be changed, MGN would prefer a condition that imposed a reasonable endeavours requirement not to change more than once a year.]</p>	2/12/04)	
21	SpC26B – Procurement of balancing systems note it applies to NTS only.	Macquarie (by email 2/12/04)	
22	<p>SpC27B - Procurement and use of SMS – note that this applies to NTS only, and reporting requirements appear onerous.</p> <p>[Applies to NTS only Somewhat onerous reporting requirements for what might be marginal activities]</p>	Macquarie (by email 2/12/04)	
23	<p>SC25 – Long term development statement</p> <p>a) Requires enhancement to cover the co-ordination of statements.</p> <p>b) Equality required between the NTS and DNs in terms of proving copies of statements to other transporters.</p> <p>[The drafting needs to be reviewed in light of Ofgem's concerns, set out in its informal licence consultation in</p>	Macquarie (by email 2/12/04)	

	<p>September, regarding co-ordination of statements as it is presently silent on this.</p> <p>MGN accepts the need for some form of co-ordination, providing concerns over potential discrimination are met. That said, we feel that either the obligation under paragraph 3(b) requiring us to provide copies of our statement to other transporters should be repeated in the NTS version (presently it is dropped there) or it should be dropped from both versions, with reliance instead being placed on the subsequent publication provision]</p>		
24	<p>LNG obligations – Would prefer this as a Special, not as a Standard or Standard Special condition.</p> <p>[NTS only. MGN comment is that would wish to see as a Special, and not as a Standard or Standard Special]</p>	Macquarie (by email 2/12/04)	
25	<p>SpC2 – Ringfencing Reference to SC43 should read SpC2</p> <p>[We believe that the reference to SC43 at the beginning of the drafting should be to SpC2. Is that correct?]</p>	Macquarie (by email 2/12/04)	
26	<p>Care with regard to other pipelines Prefer that specific obligations are included in other documents (eg UNC) to remove ambiguity and potential conflict of higher level obligations.</p>	Macquarie (by email 2/12/04)	

	<p>[MGN support the principle of respecting other transporters' systems. We have doubts as to the implications of the drafting, however. Paragraph 1 is very general, and acting in a reasonable and prudent manner could easily cause conflict with provisions elsewhere regarding things such as non-discrimination. For example, reasonable and prudent might be interpreted as having to provide a lot of information to the NTS on planning and planned maintenance outages, whereas elsewhere restrictions might be place on that. MGN would prefer that specific obligations were defined in other documents, such as the Network Code and the technical Offtake Code, if that is a separate document. Paragraph 2 could cause complications in relation to interfaces, especially those that normally carried little or no gas but which might be used in an emergency. Paragraph 3 may require us to provide regularly updated information that again might be in conflict with other provisions on information flows.]</p>		