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22<sup>nd</sup> December 2004

Dear Sonia

### **Potential Sale of Gas Distribution Networks – Licensing Consultation**

Thank you for the opportunity to comment on the proposals for amending gas transporter licences to accommodate the potential sale. I am responding on behalf of the consortium seeking to acquire the northern DN and would like to record our appreciation of the considerable effort that has gone into the production of the consultation document and licence drafts.

At this stage the major policy concerns that we have in the licensing area are:

- The private CLM procedure, which actively discriminates against two of the potential DN owners by allowing licence modifications to take place without their specific consent. In contrast the two other potential DNO owners will be required to give their specific consent to licence modifications.
- The approach to metering, which does not reflect Transco's retention of a dominant (near monopoly) position in the provision of metering services. This makes it much more economically efficient and appropriate for them to provide any last resort services and this would be consequentially beneficial to customers.
- The inclusion of storage facilities within the transportation business of the DN licensee, which extends regulation into an area where there is no evidence that such regulation is required or beneficial.

Furthermore, SSC's A33 and A34 rightly ensure independence of transportation from competitive activities. However, our consortium will have no shipping or supplier activities and only a very small metering business. Consequently, we feel it is onerous for us to appoint a compliance officer and indeed these conditions are switched off in comparative DNO licences.

I would welcome further direct discussion with you on these issues.

We detail our comments in the attached appendices. Our comments are structured by reference to the licence conditions rather than to the paragraphs of the various chapters of the consultation document for two reasons. Firstly, because comments on some of the licence conditions in the consultation document are in several places and secondly, because moving forward the debate will centre around the individual licence conditions rather than the consultation document. I hope you find this format helpful.

- Appendix I provides our detailed comments on appendix 7B of the consultation.
- Appendix II summarises some minor drafting comments on appendix 7B.
- Appendix III provides our comments on appendix 7A of the consultation.
- Appendix IV provides our comments on other issues raised by the consultation document.

Whilst considerable progress has been made there is still a significant amount of work to complete. It is important therefore that the process adopted through DISG in the next few weeks allows sufficient time for attendees to review the drafting in advance of the meetings.

In the meantime if you wish to discuss any of the points contained in our response please do not hesitate to give me a call.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Wiseman', with a long, sweeping horizontal stroke at the end.

Alex Wiseman  
Gas Regulation Director

## **APPENDIX I – Comments on licence conditions in Appendix 7B**

### **Part A - Standard Special Conditions applicable to DN and NTS licensees**

#### **1. Standard Special Condition A1 (switch on/off)**

This condition allows Ofgem to switch on/off standard special conditions and standard conditions with the consent of the licensee. The switch on/off does not happen until a date specified by the Authority. It is not clear when that date is although Ofgem has indicated that all licence conditions would be switched on/off by the time of share sale completion.

Ofgem has drafted a switch on/off provision for those conditions that apply to the DNs and NTS and those which apply just to the DNs. However both those conditions state that in the absence of a direction for switching on the relevant standard special conditions that the standard conditions in Parts A and B have to be complied with. There is therefore the potential for a conflict here. If the Standard Special Conditions which apply to the NTS and DNs are switched on but those which apply just to the DNs are not, the DNs would have one condition stating that the standard conditions in Parts A and B did not have to be complied with and another condition stating that the standard conditions in Parts A and B do have to be complied with. Whilst this may not be an issue in practice if Ofgem deals with everything at the same time, we do not think that the potential conflict should be left in the licence.

#### **2. Standard Special Condition A2 (private CLM)**

In our response to the ‘Initial Drafting of Collective Licence Modification Licence Condition’ we detailed our concerns with the proposed drafting. We do not believe the consultation document addresses these concerns nor do we agree with the rationale which Ofgem advances for maintaining the current drafting. Ofgem states at paragraph 4.8 that “Ofgem considered that to lose the ability to consistently modify Licences in a divested industry structure would not be in the interests of customers nor consistent with best regulatory practice”. It is clear that the CLM procedure does not give Ofgem this ability since Transco and SSE can veto any proposal. We do not consider it consistent with best regulatory practice that the other two DN operators should be placed in this disadvantageous and discriminatory position. The number of parties affected by and the rationale behind the original CLM procedure was entirely different from the current situation and we do believe that the assertion at paragraph 6.19 that ‘the different effects on licence holders were considered at this point’ is relevant to the present discussion.

It is also pertinent to consider previous approaches taken by Ofgem where there are small numbers of licensees, for example, electricity transmission. In these instances collective modification procedures have not been used.

The persons whose objections are counted for the purpose of this condition are defined as "relevant licence holders". A "relevant licence holder" is someone whose licence (a) would be modified by the inclusion of a new condition or (b) would be modified by modifying an existing condition (other than one not in effect). It is not clear that, based

on this wording, a licence holder that has a standard special condition which is not in effect but which would be so following the implementation of the Ofgem proposal would count as a "relevant licence holder". This should be explicit and the wording needs to be amended. We would suggest amending paragraph b) of the definition by adding after the word "relate" on the fifth line the words "(including any Standard Special Condition which is not in effect but which would be so if the proposal is implemented)".

### 3. Standard Special Condition A3 (definitions)

At DISG 29, the possibility of switching off Standard Condition 1 and incorporating any missing definitions into Standard Special Condition A3 was discussed. We strongly support this approach as we believe it will make the licence easier to read and alleviate the confusion caused by having the same terms defined in two different places.

We have the following additional detailed points on Standard Special Condition A3.

- (a) "Independent system" is defined in both conditions with the same definition. It is not clear why that is the case.
- (b) The definition of Metering Equipment refers to a paragraph of the licensee's Network Code as in place on 1<sup>st</sup> April 1997. Of course the licences which DN purchasers will be taking over will not have been in place since that time and so neither can there have been a Network Code of the licensee at that time
- (c) Paragraph 8 - in the first line under the lettered paragraphs the reference to "Standard Special Conditions" should read "standard conditions" and in the last line the word "other" should be inserted before the word "standard". The drafting in this paragraph 8 is the same as appears in the shipper and supplier licences. Does Ofgem consider that this wording is sufficient to cover the case where the shipper and supplier licences refer to standard conditions of the transporter's licence that Ofgem has switched off and replaced with a Standard Special Conditions?
- (d) Paragraph 12 - first line - "condition" should read "Standard Special Condition"
- (e) Paragraph 13(b) first and fourth lines "special conditions" should read "Standard Special Conditions"
- (f) Paragraph 14 first line - "these conditions" should presumably read "these Standard Special Conditions".

### 4. Standard Special Condition A4 (charging shippers)

We would suggest that the words "on 1 April and 1 October" read "with effect from" in case any changes are made at a later date with retrospective effect.

We would also suggest that the paragraph dealing with the JGA arrangements is reworded as follows "...to the extent that such arrangements relate to the co-ordination of the administration of any changes referred to in sub-paragraph (a) made by the licensee with any such changes made by...". Whilst we understand the sensitivity of using the word "co-ordination" we think that as long as it is clear that the co-ordination relates to

the administration, that it is a more accurate reflection of what the JGA will be doing. Also the word "co-ordination" is still used in Standard Special Condition A12.

In this condition and many others Ofgem has reinstated the old Transco wording regarding storage arrangements. Ofgem has explained this inclusion by relating it to the treatment of LNG storage. Despite having raised this at DISG 29 we still do not understand the relevance of inserting the storage wording into the DN licences. Surely if the licensee had any storage facilities it would either have bought those at a commercial rate or have established them itself. Why therefore would those storage facilities be automatically regulated and automatically fall within the transportation business of the licensee? We can see that Ofgem would want to ensure that there is no cross subsidy but cannot see why the storage arrangements would not be normal commercial arrangements. Also to the extent that it is valid to reference all types of storage arrangements in the DN licences we do not see why it is not also valid to include the same wording in the NTS licence. We have the same point in relation to the other conditions in which the storage wording has been included but have not repeated the point each time.

#### 5. Standard Special Condition A5 (charging methodology)

This condition requires the licensee to consult "the gas shippers" on changes to the charging methodology. The term "gas shippers" is not defined but presumably means all of them. Would Ofgem please confirm whether this is the intent or whether it is intended that a licensee should consult its own shippers.

We continue to believe that the obligation should be to review the methodology 'from time to time'. We consider it bad regulatory practice to take words such as 'at all times' which have a clear unambiguous meaning and argue they in fact meaning something different. Ofgem states at paragraph 5.64 that the drafting is intended to mirror the electricity transmission licence and note that electricity licensees have not experienced problems of the nature suggested by the DISG respondent. Whilst we support the general principle of consistency across licences, where relevant and appropriate, the fact that one licence is badly drafted is not an appropriate precedent. No one at DISG has suggested that there have been problem in the past. Our concern is the future and assurances from current officers of Ofgem cannot fetter the powers of the Authority in the future. The current drafting would automatically put licensees in breach of their Licence.

A more appropriate and relevant precedent is with the licence modifications Ofgem recently made (in June 2004) to the electricity distribution licence in relation to use of system charging. This drafting requires the licensee to "review the use of system charging methodology at least once in every year". We fail to understand why it is necessary to have fundamentally different approaches between gas and electricity distribution charging.

It is also worth noting that no restrictions apply in relation to frequency of modifying electricity distribution charges and there is no evidence that this has created problems for operation of the market.

We support the adoption of a dead band limit in relation to over/under recovery provisions and agree with Transco's suggestion of 2% limit in relation to DN licensees.

The same drafting comments in relation to the dates of 1 April and 1 October and the JGA arrangements apply as for Standard Special Condition A4.

#### 6. Standard Special Condition A10 (Provision and Return of Meters)

The Ofgem strategy is to develop competition in metering. This will be achieved when a range of competitive providers and not the DN is providing the majority of metering services. At the time that the Transco GT licences for the IDNs are placed under the control of the new owners the IDN licensee will have zero market share in the metering market. This is because Transco plc is retaining ownership and control of its metering business, meter assets and associated contracts within the IDN areas.

This condition therefore requires the IDN to enter the metering market which appears counter to Ofgem strategy. We can understand the desire for a last resort obligation whilst a market is in transformation, the IDN as a new entrant however, is not best placed to provide or deliver such a service in an economically efficient manner. To establish a last resort service from scratch will incur a level of fixed costs that will be amortized over a low volume of transactions leading to high unit charges. This is not in the customers' interest and may not be covered by the existing price control arrangements.

If a last resort service is required then the most efficient and effective means of achieving this is to retain such an obligation on the incumbent provider (Transco plc) who will still control a dominant share of the metering market in the IDN area.

#### 7. Standard Special Condition A11 (Network Code)

It is not clear from the text which definition of Network Code is being used. Standard Special Condition A3 states that the Network Code means the Network Code as prepared by the licensee. However at the very end of Standard Special Condition A11 paragraph (b) states that where the context requires references to the Network Code includes the equivalent document prepared by each other relevant gas transporter (i.e. the other DNs and the NTS). This paragraph does not limit that interpretation of the Network Code to this Standard Special Condition and so potentially it could apply to the rest of the licence. This creates uncertainty across the rest of the licence. Ofgem clarified at DISG 29 that the reference to Network Code in the second new objective was intended to mean the licensee's Network Code. We believe that the additional definition of Network Code at the end of A11 and the definition of Individual Network Code should be removed. The convention should be that references to Network Code mean the licensee's own code and where it is intended to refer to the common arrangements that the term Uniform Network Code should be used.

Paragraph 8 - if the definition of Network Code in this paragraph refers to the other Network Codes as well then it would mean that the licensee has to be concerned with the other Network Codes incorporating the UNC which does not make sense. Structurally we do think it odd to have the network code modification procedures, which are to amend the UNC and the Network Code contained within the sub document. The key issue is the basis for amending the network code modification procedures. As long as this is clear there is no reason why the procedures could not be contained in a separate document and then incorporated by reference into both the UNC and the Network Code.

Paragraph 9 states that the UNC should be capable of modification by shippers, transporters etc. However it also goes on to provide that Individual Network Codes should be capable of being modified by the licensee's own shippers and by the shippers of other DNs and the NTS. We do not see why this should be the case nor why third party participants should be able to modify the Individual Network Code as opposed to the UNC.

Paragraph 9(c) states that the network code modification procedures should provide where a modification proposal has been made to an Individual Network Code for an alternative proposal to be made to the UNC by or on behalf of the licensee and "other relevant gas transporters". Does this assume therefore that the other transporters will agree with the alternative proposal or that the licensee has some sort of authority to make the proposal on their behalf? Related to this point, Paragraph 13 states that an alternative proposal can be made but only where a transporter did not make the original proposal. What is the logic for this since presumably the transporters will not always agree?

#### 8. Standard Special Condition A12 (Joint Office Governance Arrangements)

Paragraph 1(a)(ii) - the words "administering of the co-ordination" should be replaced with ""co-ordination of the administration"

Paragraph 1 (a) (iv) is too widely drawn - for example the UNC might provide for maintenance to be co-ordinated but we do not see the joint office having any role in this regard. Surely the joint office should cover those matters specifically provided to be dealt with by the joint office in the UNC.

Paragraph 1 (a)(v) this refers to the promotion of efficiency in the implementation and administration of the Network Code. The term Network Code should be replaced with UNC.

#### 9. Standard Special Condition A14 (Common System Obligations)

It should be made clear that this obligation for a DN relates only to the systems that are required for operation of the DN and does not place an obligation on the DN in relation to systems used to operate the NTS.

#### 10. Standard Special Condition A15 (Agency)

This condition refers to the term "common basis". It is not exactly clear what this means. Does it mean that the same services are being provided, or similar services are being provided in the same way or services are being provided using the same systems? This should be more clearly phrased as it is the basis of the obligation in this condition.

#### 11. Special Standard Condition A17 (Obligation not to prejudice another Transporter's System)

This is a new provision in the transporter's licence and has largely been drawn from a condition in the shipper's licence.

Paragraph 1 is an obligation to act in a reasonable and prudent manner which we consider provides a reasonable general overarching obligation. However paragraph 2 provides that the licensee shall not knowingly or recklessly pursue any course of conduct which is likely to prejudice: (a) the safe and efficient operation from day to day of the pipeline system of any other gas transporter; (b) the safe, economic and efficient balancing of another transporter's system; and (c) the due functioning of the offtake arrangements provided for in the Network Code.

As mentioned above this condition was taken from the shipper's licence where it was aimed at controlling commercial rather than operational behaviour. Arguably many things that a transporter does may fall within paragraphs (a), (b) and (c) (eg implementing emergency arrangements, interrupting its customers when the NTS is long on gas, not interrupting its customer when the NTS is short on gas), but the transporter could have been pursuing that course of action because of its own statutory and licence and contractual obligations. To avoid falling foul of this condition the licensee is almost better not communicating with other transporters to avoid having actual knowledge of what is going on. This seems perverse.

Paragraph 3 requires the licensee not knowingly or recklessly to give a false impression as to the quantity of gas to be offtaken from or brought onto another's system. Whilst our understanding is that DNs will give OPNs to Transco so there is something for DNs to be measured against, it is not clear what information Transco will be giving to the DNs about flows coming onto the DN nor do we properly understand the pressure regime which Transco will be offering and how that will impact on offtakes by the DNs. For this condition to work as envisaged it requires obligation on the NTS to keep the DN informed with all information relevant to this obligation.

It is our view that the general obligation in paragraph 1 more than covers the requirement for one transporter to behave sensibly in relation to another and paragraphs 2 and 3 should be deleted.

## 12. Standard Special Condition A30) (Regulatory Accounts)

Even if metering last resort obligations are retained on IDNs their metering activities will be very small businesses that do not merit the production of separate audited accounts. We would wish to discuss with Ofgem alternative means of achieving the objectives required by this condition in relation to metering activities if Ofgem disregard our response to standard special condition A10.

## 13. Standard Special Condition A33 (Restriction of use of information and independence of Transportation Business)

The application of this condition needs to be considered separately in relation to each of the potential owners of the IDNs and the RDNs. In the case of the northern DN none of the potential owners holds supply or shipping licences in the UK. Where similar situations occur in electricity distribution Ofgem has consented to the switching off of this condition for those licensees. We would welcome further discussion with Ofgem on this issue.



We have a number of detailed comments on the current drafting:

- (a) Definition of ‘relevant shipper’ – it is not clear why electricity and gas supply licensees are mentioned in this definition as well as in the definition of ‘relevant supplier’. Relevant shipper and relevant supplier are used in context together so gas and electricity supply licences are covered.
- (b) Definition of ‘trading business’ – This is stated to include storage of gas offshore and on shore other than LNG. Yet as mentioned earlier these storage activities are also stated to be part of the transportation business for other purposes. It is not clear how they can be both.
- (c) Paragraph 2 defines the systems that a licensee has to put in place in relation to Confidential Information. In particular a relevant supplier and relevant shipper must not have access to Confidential Information unless it is made available on an equal basis to any gas or electricity supplier or gas shipper. We do not believe that information is available currently on an equal basis to gas and electricity suppliers. For example SPA information would not be made available to electricity suppliers.
- (d) Paragraph 4 requires the licensee to have in place a statement detailing the systems etc. that must be in place by 1<sup>st</sup> May 2005. Ofgem explained at DISG 29 that Transco would be making the DN businesses “licence compliant”. However Transco will write the statement from their perspective and not from the situation of a DN buyer. Whilst it is accepted that the DN can amend the statement, the DN does also have to take all reasonable measures to ensure compliance which will apply from Day 1.
- (e) The clarification of transportation business includes the licensee’s Metering Business but excludes its Meter Related Services Business. However Meter Related Services Business is defined on page 52 to mean the same thing as the Metering Business on page 20.

#### 14. Standard Special Condition A34 (Appointment of Compliance Officer)

See comment in first paragraph in our response to standard special condition A33.

#### 15. Standard Special Condition A36 (Financial/Ring Fencing)

This requires the licensee not to conduct any business or carry on any activity other than one within sub-paragraphs (a), (b) and (c) of the definition of ‘permitted purpose’. Paragraph (a) refers to the transportation business. This does not include any storage activities. It therefore seems inconsistent to include reference to storage assets in definitions of transportation arrangements.

#### 16. Standard Special Condition A38 (Credit Rating of the Licensee)

We raised at DISG 29 the problem of a new licensee having in place at completion an investment grade issuer credit rating. The initial response from Ofgem was that the obligation was a reasonable endeavours one. However the reasonable endeavours obligation relates to the maintenance of the rating and assumes that a rating is in place at

the outset. If the condition was amended to include the words “obtains and” before the word “maintains” this would meet our concerns.

17. Standard Special Condition A41 (Emergency Services to other Gas Transporters)

Whilst we accept the principle of this condition, it should be made clear that the requirement only applies to transporters connected downstream of the DN offtake points and not all transporters within the DN boundary. Also whilst we recognise the limitations placed by paragraph 3, we also believe that it should be made clear that a transporter will not be required to provide services outside of the existing skill set of its staff e.g. the condition as drafted could require emergency services to be provided to unconnected pipelines such as coal bed methane pipelines.

18. Standard Special Condition A43 – (Provision of Metering and Meter Reading Services)

Please see comments in relation to standard special condition A10.

19. Standard Special Condition A46 – (Non Discrimination in Metering Activities)

Please see comments in relation to standard special condition A10.

We believe that the references to gas shippers in paragraphs 2 and 3 should refer to gas supplier.

**Part B - Standard Special Conditions applicable to all NTS licensees**

20. Included in the conditions are switch on/off provisions and private CLM provisions for NTS licensees. Given that there is only one NTS licensee at the present time we see no point in having a private CLM procedure for the NTS licensee. Indeed its inclusion suggests that the Authority has already concluded in principal that the NTS could be fragmented to more than one licensee. We presume that this is not the case.

## **Part C – Special Conditions applicable to the NTS licensee**

### **21. Special Condition C1 (amendments to standard conditions and standard special conditions)**

#### **Paragraph 3 - amendment to Standard Special Condition A5 –**

Insertion of paragraph 12. It would help the reading of this paragraph if after the reference to “Standard Special Condition A3” there was inserted the words “(as amended by Special Condition C1)”.

#### **Paragraph 4 - amendment to Standard Special Condition A6 –**

At DISG 29 it was explained that in the drafting of “transportation business” the references to metering services should have been in a separate paragraph (ii). Given that is the case in the new paragraph 2(i) to be inserted for Transco the references to Metering Services can be deleted.

#### **Paragraph 8 – amendment to Standard Special Condition A27 (Disposal of Assets)**

In paragraph (a) there is no need to refer to paragraph 6 as this is being replaced by paragraph (b).

#### **Paragraph 9 - amendment to Standard Special Condition A30**

The new paragraphs 2(a), (c) and (d) which are to replace paragraphs 2 (a), (c) and (d) of Standard Special Condition A30 are in fact identical to the paragraphs they are replacing. There is therefore no need to delete paragraphs 2(a), (c) and (d) from the Standard Special Condition. Also paragraph 2(b) is virtually identical to that which it is replacing apart from a few words at the end of sub-paragraph (i). Rather than delete the whole of paragraph (b) it would be more user friendly to replace the relevant words.

Again the new paragraph 10 is identical to that which it is replacing apart from the reference to the LNG Storage Business. The addition of these words could therefore be done as a separate amendment.

### **22. Special Condition C2. (Long Term Development Statement)**

See comments on Standard Special Condition D3.

### **23 Special Condition C4. (Prohibited Procurement Activities)**

It would seem to make sense if the references to the Top Up Manager were removed.

### **24. Special Condition C19. (Undertaking from Ultimate Controller)**

Paragraph 1 provides for the licensee to procure an undertaking from its ultimate controller that the ultimate controller will instruct and direct the licensee to conduct its NTS business in a non-discriminatory manner. We fully support the need for such an undertaking to ensure a level playing field between the RDNs and the IDNs. However having considered this licence condition and what it is trying to achieve we are not

convinced that it is correct that the undertaking should on this occasion be in favour of the licensee but consider that it should be in favour of the Authority. We say this because, at the time at which one would expect the licensee to enforce the undertaking is at a time when the licensee is presumably already in breach. If it is already in breach we do not see what enforcing the undertaking by the licensee will add. Presumably if the licensee would have wanted to have complied it would have done so without being instructed to do so by its ultimate controller. An undertaking in favour of the Authority however would allow the Authority to involve the ultimate controller in amending any inappropriate behaviour of the licensee should the licensee fail to respond to any requests from the Authority. We see this licence condition as being different from Standard Condition 45 and Standard Special Condition A26 where we see the logic of having the undertaking in favour of the licensee. We struggled to understand the drafting at the end of this paragraph. We believe that it may have been intended to read as follows.

“.... including any such advantage from a preferential or discriminatory arrangement). In particular the licensee shall be required to enter into arrangements (which if the businesses were not held within the same company would be contractual arrangements with the licensee’s business in respect of the Distribution Networks that it owns) on terms which do not materially or unduly differ from corresponding contractual arrangements entered into between the licensee and any other relevant gas transporter.”

#### 25. Special Condition C20

Paragraph 3 states that, if the Authority has not indicated otherwise within 60 days of receipt, the statement prepared by Transco as to how it will ensure separation will be deemed to be approved. Given the importance of this statement there should not be any form of deemed approval. Ofgem should positively approve the statement. If they do not do so within the period of 60 days then it should be deemed to be rejected.

Paragraph 5 – it may be confusing to refer to “managerial boards”. They are not boards in the corporate sense and it may be better to recognise that by calling them “managerial committees” or “managerial executives” thus keeping the word “board” to mean the board of directors of Transco plc. Whilst a director of Transco plc can take decisions at the “managerial” level in the interests of the particular business that is not true at board meetings of Transco plc where the directors of the board have duties at law in relation to the business as a whole and indeed can and should seek access to information relating to the business as a whole. Rather than providing that the managerial level should contain a minimum number of plc directors it would be better to provide that there would be only one or none and that all decisions relating to the separate businesses will, save to the extent prevented by law, be taken by the managerial level. This would ensure a better degree of independence.

Paragraph 6 provides that the licensee has to take reasonable measures to ensure compliance with the statement. Again given the importance of the statement in ensuring separation there should be an absolute obligation, or at least a best endeavours obligation, on Transco.

Similar comments also apply in relation to E 10 as this condition is virtually identical but relates to the RDNs.

At one of the ERFs, we discussed how Transco would enforce the NTS/DN operator agreement in relation to the RDNs given that they were the same company. At that meeting, Ofgem indicated that there would be a licence condition on Transco requiring it to enforce contractual obligations in relation to the RDNs as though they were separate businesses. The licence conditions produced to date do not do that and indeed do not appear to cover that point at all. A6 is much more general in scope. It would be preferable to include a licence condition that obliges the NTS licensee to behave in relation to the RDN businesses as though it were a separate company not affiliated to the licensee including entering into written arrangements and taking enforcement action in relation to those arrangements as far as possible as though they were separate companies. There should also be a mirror obligation on the RDN licensee.

#### 26. Special Condition C21

Paragraph 3 – the compliance committee, as a sub committee of the board of Transco, should report to that board as well as to the audit committee of the ultimate controller. Ofgem has indicated that Transco would have an audit. However the licence conditions do not require this and they should do so.

#### 27. Standard Special Condition A35

It is unclear from this condition whether each Distribution Network owned by Transco is regarded as a separate business or not, ie can the individual Distribution Networks cross subsidise each other? I presume the answer is intended to be no but if this is the case, this could be made clearer in the drafting.

## **Part D Standard Special Conditions applicable to all DN licensees**

### **28. Standard Special Condition D1 (Switch On/Off)**

See comments at point 1 above.

### **29. Standard Special Condition D2 (Private CLM)**

See comments at point 2 above.

### **30. Standard Special Condition D3 (Long Term Development Statement)**

This condition replicates Transco's condition which similarly requires it to produce a Long Term Development Statement.

However there is no recognition in the licence condition that at least in the short term the DNs will be reliant on the NTS providing them with data to input into the forecasting process. The condition also assumes that the DN statement will be finished, provided to Transco and that then Transco will produce its statement. In reality the two will be produced very much in parallel and this is recognised in the presentation given by Transco at ERF02. We would therefore like to see the following words inserted into the Special Condition D3 after the words "for the licensee to provide" "taking account of the licensee's requirement for information from the holder of the NTS GT licence".

To complement this we would also suggest including in Transco's Special Condition C2 a new additional paragraph as follows:

"The licensee shall provide such reasonable assistance and co-operation including the provision of appropriate information to the licensees of any other pipeline systems as such licensees may reasonably require for the purposes of complying with a direction by the Authority to prepare a statement for their respective pipeline system similar to the one provided for in this Special Condition."

### **31. Standard Special Condition D6. (Emergency response to the NTS)**

Paragraph 1 should be amended to make clear that the licensee is not obliged to provide emergency services a long way out of its DN area. We would suggest adding after "NTS" on the second line the words "which is in reasonable proximity to the licensee's pipeline system."

It was made clear at DISG 29 that despite the wording of paragraph 2, the DNs will not in fact be carrying out any physical works in relation to the NTS and that in fact what is required is the management of the general public away from the scene of the incident. The wording of this paragraph should be amended to reflect this. We would suggest the following:

"The provision of a first call emergency response service referred to in paragraph 1 shall not require the licensee to carry out any physical works to any part of the NTS but only to attend the scene of the incident, to take reasonable steps to cordon the area off and to take reasonable steps to keep the general public (with the assistance of the emergency services

as appropriate) away from the scene of the incident until such time as the personnel of the operator of the NTS are able to attend the scene.”

Consequent on the change to paragraph 2, paragraph 4 should be amended to read: “Nothing in this condition shall require the licensee to employ more staff than it would otherwise employ for the purposes of its transportation business. The definition of “first call emergency response” should also be deleted.

32. Standard Special Condition D9. (DN incentive and performance reporting)

Definition of Distribution Network peak demand - this is stated to be defined in Standard Condition 16 but it is not.

Definition of M number database - we do not see why this is defined by reference to Transco's Network Code. The definition should either refer to the licensee's Network Code or to the Uniform Network Code.

33. Standard Special Condition D10 (connections information)

Paragraph 3 – the time of 5pm should be replaced with 4pm, as a request after 4pm would effectively not be dealt with until the next day.

We are also concerned that a DN may receive multiple enquires from say a builder on one day in short succession. In this circumstance it is not reasonable to expect these enquires will be processed within normal timescales. This situation should be catered for in paragraph 7.



## APPENDIX II – Minor drafting comments on licence conditions in Appendix 7B

Standard Special Condition A2	Page 12	Paragraph 6	1 <sup>st</sup> line - move "to" so that it appears after "largely"
Standard Special Condition A3	Page 21	Definition of Network Code	"subject of" should read "subject to"
Standard Special Condition A4	Page 31	Paragraph 2(b)	The word "proposals" in lines 3 and 4 should be replaced with "changes" as the word "proposals " is not used in paragraph 2(a)
Standard Special Condition A11	Page 63	Paragraph 21	The references to paragraphs 10 should refer to paragraph 9.
Standard Special Condition A11	Page 64	Paragraph 22 - definition of "network code modification procedures"	The reference to paragraph 8 should be to paragraph 7
Standard Special Condition A12	Page 65	Paragraph 1(d)	"joint governance arrangements" should have initial capitals
Standard Special Condition A17	Page 72	Paragraphs 1 and 2	"Relevant Gas Transporter" should all be in lower case
Standard Special Condition A32	Page 105	Paragraph 1(e)	Delete the words "within purpose" on the 4 <sup>th</sup> line
Standard Special Condition A36	Page 115	Paragraph 4(b)(i)	Insert "A" before "30"
Standard Special Condition A39	Page 123	Paragraph 2(b)	"either" on the 2 <sup>nd</sup> line should read "any"
Standard	Page 123	Paragraph 3(i)	Insert "to" after the word "prior"

Special Condition A29			
Standard Special Condition B1	Page 142	Paragraph 1	"A1" should read "B1"
Special Condition C1	Page 155	Paragraph 3	"supply of transportation services" should have initial capitals as should "transportation system" which is referenced in the same definition
Special Condition C5	Page 174	Paragraph 2	The words "either it or its affiliates" should read "it and its affiliates"
Standard Special Condition D1	Page 242	Paragraph 1	"A1" should read "D1"
Standard Special Condition D5	Page 256	Paragraph 2	The words "either it or its affiliates" should read "it and its affiliates"
Standard Special Condition D5	Page 256	Paragraphs 3, 4, 5, 6, 7, 8, 9,11 and 14	"Special Condition" should read "Standard Special Condition"
Standard Special Condition D9	Page 269	Definition of "specified information" paragraph (a)(ii)	Delete "the" before "each Distribution Network"
Special Condition E1	Page 285	Paragraph 1 - at the end of the new paragraph 4(b)(i) and (ii)	In each case insert closing bracket at end of text

### **APPENDIX III – Comments on licence conditions in Appendix 7A**

#### **34. Standard Condition 1 (Interpretation)**

See our comments at point 3 under Appendix 7B. We strongly support the switching off of this condition and including any relevant definitions in Standard Special Condition A3.

#### **35. Standard Condition 4B (Connection Charges)**

This condition refers in various places to Standard Condition 4C which has been switched off. Is it the intention to leave these references in place?

#### **36. Standard Condition 16 (Pipeline System Security Standards)**

Whilst in general we accept that it is reasonable for a DN to have a 1 in 20 obligation, it has to be recognised that there is a fundamental difference in the way that a DN secures its capacity (and flexibility) requirements compared to Transco as an integrated business. Transco has entirely physical assets to secure its obligation, whereas a DN cannot meet its obligation with these alone and has to rely on contractual provision from Transco as well. In order to be able to assess the acceptability of the drafting as it is, DNs need:

- (1) To be assured that they have exclusive rights to capacity and flexibility at their own DN offtake points and that these products are tradable.
- (2) To have a clear indication as to what the baseline exit capacity and flexibility products will be.
- (3) Detailed business rules on the pressure arrangements Transco are proposing.
- (4) Greater certainty on the interpretation of the NTS 1 in 20 obligation. In relation to this latter point the concern here is that Transco have said that how they provide additional capacity – e.g. by physically building physical assets or not is a matter for them. This means that the DN has no assurance that there is physical capacity to match the capacity booked. The DN also does not know the assumptions that the NTS have made with respect to NTS diversity and so cannot assess the risk of failure.

We believe that all of these issues need to be considered in more detail before the wording of the condition is finalised.

## **APPENDIX IV – Other Issues Raised by the Consultation Document**

37. Paragraph 6.98 – We do not believe it is appropriate to introduce a licence requirement concerning the governance of technical standards. Industry standards already exist and to fetter DNs with a specific standard that might be different from a developed industry standard reduces the ability for innovation and thus leads to higher transportation costs. The possibility of different standards arising already exists today as between IGTs and DNs so we do not see that this needs to be addressed as part of the sales process. If common technical standards are to be introduced then we think that they should be dealt with elsewhere in the regulatory framework.
38. Paragraph 6.119 – arrangements for testing measuring equipment should be dealt with in the NTS/DN operator agreement since that is the most appropriate place for dealing with the practical arrangements associated with the testing of measuring equipment. We support the Ofgem proposals for the testing of water vapour.