

# NOTICE OF PROPOSED CONSENT TO TRANSFER

## SECTION 8AA(9) GAS ACT 1986

This Notice is issued by the Gas and Electricity Markets Authority (the “**Authority**”) in connection with National Grid Transco plc’s (“**NGT**”) proposed sale of one or more of Transco plc’s (“**Transco**”) local gas distribution networks (“**DNs**”) (the “**Proposed Transaction**”).

The Authority, pursuant to section 8AA(9) of the Gas Act 1986 (the “**Act**”), gives notice that it proposes (subject to certain modification conditions) to grant consent to the transfer of four of the six gas transporters (GT) licences currently held by Transco to four wholly owned Transco subsidiary companies.

### Background

1. Transco (a company registered in England & Wales with company number 2006000) is the holder of a gas transporters (“**GT**”) licence treated as granted under section 7 of the Act which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry (the “**Secretary of State**”) pursuant to Paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 (the “**Original Transco Licence**”).
2. On 22 July 2004, the Authority issued a notice under sections 7(5) and 8(4) of the Act stating that Transco had (in connection with the Proposed Transaction) applied for eight additional GT licences which the Authority was minded to grant on the basis that any surplus licences could be revoked.
3. Pursuant to section 7 of the Act, on 5 November 2004, the Authority (without in any way fettering its discretion in relation to the Proposed Transaction) granted five additional GT licences to Transco (the “**Additional Transco Licences**”) rather than the eight originally applied for by Transco<sup>1</sup> and Transco formally withdrew its remaining three applications. As a result of this, as at the date of this Notice,

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<sup>1</sup> This reflects the Authority’s decision in November 2004 not to require each of the DN’s which are to be retained by NGT (the “**RDNs**”) to be held in separate legal entities

Transco holds in total six GT licences. The five Additional Transco Licences were granted in substantially the same form as the Original Transco Licence and a copy of the form in which the Additional Transco Licences were granted can be found on Ofgem's website<sup>2</sup>.

4. The Original Transco Licence and the five Additional Transco Licences are together referred to in this Notice as the **"Transco Licences"**.
5. Until 1 February 2005 all gas transportation assets owned by Transco were operated pursuant to the Original Transco Licence. Until 1 February 2005, the five Additional Transco Licences whilst active, did not relate to any particular gas transportation assets owned or operated by Transco.

#### **The Modification process to date: November 2004 section 23 Notice**

6. As part of the Proposed Transaction, pursuant to section 23(3) of the Act, on 25 November 2004, the Authority published a notice proposing modifications to each of the Transco Licences<sup>3</sup> (the **"Initial S.23 Notice"**) together with an explanatory document<sup>4</sup>.
7. The Initial S.23 Notice sought to consult on the Authority's proposal (as part of the Proposed Transaction) to separate the price controls (as set out in the Original Transco Licence) to achieve revenue separation between Transco's National Transmission System (the **"NTS"**) and each of the DNs which are proposed to be disposed of by Transco (the **"IDNs"**) and each of those DNs which are proposed to be retained by Transco (the **"RDNs"**). The Initial S.23 Notice stated that the effect of the proposed modifications would be that each of the five Additional Transco Licences would relate to specific DN assets and the Original Transco Licence would relate to the NTS assets only.
8. As part of the Proposed Transaction, Transco is proposing to hive-down the four IDNs (the South DN, the North DN, the Wales and West DN and the Scotland DN) to four wholly owned Transco subsidiary companies respectively (Blackwater G Limited, Blackwater F Limited, Blackwater 2 Limited and

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<sup>2</sup>[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9161\\_A copy of the GT Licences issued to Transco\\_05.11.04.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9161_A%20copy%20of%20the%20GT%20Licences%20issued%20to%20Transco_05.11.04.pdf)

<sup>3</sup> [http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1\\_8936#top8936](http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1_8936#top8936)

<sup>4</sup> National Grid Transco – Potential sale of gas distribution network businesses. Licensing: Next Steps. Formal consultation under Section 23 and informal consultation under Section 8AA of the Gas Act 1986 November 2004 263/04

Blackwater SC A Limited as described further in paragraph 14 below). In addition, Transco is proposing to transfer four of the five Additional Transco Licences (which are the subject of this Notice) to each of the four wholly owned subsidiary companies. After hive-down of the four IDNs and transfer of the four licences, Transco proposes to sell the shares in each of the four relevant wholly owned subsidiary companies to third party purchasers.

9. The proposed hive-down by Transco of the four relevant IDNs from Transco to the four relevant wholly owned subsidiary companies will require, inter alia, the consent of the Authority pursuant to Amended Standard Condition 29 of the Original Transco Licence. It was made clear in the Initial S.23 Notice and the accompanying explanatory document that the modifications proposed in the Initial S.23 Notice would only be directed by the Authority if the Authority granted its consent to Transco to hive-down the four relevant IDNs under Amended Standard Condition 29 of the Original Transco Licence.
10. On 12 January 2005, the Authority received four applications from Transco seeking the Authority's consent under Amended Standard Condition 29 of the Original Transco Licence to dispose of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies as part of the Proposed Transaction.
11. On 20 January 2005, the Authority met to consider Transco's applications. After careful consideration the Authority granted its consents to Transco under Amended Standard Condition 29 of the Original Transco Licence to dispose of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies. Such disposal is not to take place prior to 1 May 2005. The Authority's consents were granted on a conditional basis. Transco is required to satisfy a number of conditions precedent before the consents become effective. In addition, the Authority attached a number of conditions subsequent to its consents. In particular, and without limitation, the Authority's further consent is required in relation to a number of areas of the Proposed Transaction. Without limitation, as a condition to the Authority's consent, Transco is prohibited from selling the shares in the four relevant wholly owned subsidiary companies without the prior consent of the Authority.

12. It is noted that the proposed hive-down of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies also requires the consent of the Secretary of State under Amended Standard Condition 29 of the Original Transco Licence. The Secretary of State granted this consent on 27 January 2005.
13. On 1 February 2005, in accordance with the powers contained in section 23 of the Act and with the written consent of Transco in respect of each of the six Transco Licences, the Authority issued a direction modifying the licence conditions in each of the six Transco Licences in the manner largely specified in the Initial S.23 Notice respectively with effect from 1 February 2005<sup>5</sup>. As a result, as at the date of this Notice, there is revenue separation between the NTS and each of the four IDNs which are proposed to be disposed of by Transco and each of the four RDNs which are proposed to be retained by Transco. As at the date of this Notice, the four relevant Additional Transco Licences (to which this Notice relates) respectively relate only to each of the four IDNs to be disposed of by Transco, one of the Additional Transco Licences relates only to the four RDNs to be retained by Transco and the Original Transco Licence relates only to the NTS.

#### **Application for transfer of licences**

14. On 12 January 2005, the Authority received an application from Transco requesting the Authority's consent under Special Condition 25A of each of the four relevant Additional Transco Licences and under section 8AA of the Act for the transfer (in connection with the Proposed Transaction) of each of the four relevant Additional Transco Licences which relate to the four IDNs which Transco is proposing to sell as follows:
- a. The Additional Transco Licence in respect of the South Distribution Network: to Transco's wholly owned subsidiary company, Blackwater G Limited (registered in England with number 5167021) whose registered office is at 1-3 Strand, London WC2N 5EH;
  - b. The Additional Transco Licence in respect of the North Distribution Network: to Transco's wholly owned subsidiary company,

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<sup>5</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10043\\_2405.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10043_2405.pdf)

Blackwater F Limited (registered in England with number 5167070) whose registered office is at 1-3 Strand, London WC2N 5EH;

- c. The Additional Transco Licence in respect of the Wales and West Distribution Network: to Transco's wholly owned subsidiary company, Blackwater 2 Limited (registered in England with number 5046791) whose registered office is at 1-3 Strand, London WC2N 5EH; and
- d. The Additional Transco Licence in respect of the Scotland Distribution Network: to Transco's wholly owned subsidiary company, Blackwater SC A Limited (registered in Scotland with number SC264065) whose registered office is at 191 West George Street, Glasgow, G2 2LD.

15. The above proposed transfers of the four relevant Additional Transco Licences from Transco to the four relevant wholly owned Transco subsidiary companies are referred to in this Notice as the "**Proposed Transfers**". For the avoidance of doubt, one of the Additional Transco Licences is proposed to be retained by Transco plc in respect of its RDNs.
16. Transco stated in its request for consent to the Proposed Transfers that such transfer would not take place earlier than 1 May 2005.
17. In issuing this Notice it is important to make clear that after the Authority's decision in relation to the Proposed Transaction on 20 January 2005, there can be no expectation on the part of NGT, Transco, potential shippers, suppliers, DN purchasers or any other interested parties as to any further decisions which the Authority may be required to take or any further consents which the Authority may be required to grant (including for the avoidance of doubt any decisions or consents which may be necessary pursuant to a condition precedent or a condition subsequent attached to the consents granted by the Authority on 20 January 2005) in relation to the Proposed Transaction.
18. The information in this Notice is not binding on the Authority. Nothing in this Notice is to be construed as granting any rights or imposing any obligations on the Authority. The Authority's discretion will not be fettered by any statements made in this Notice.

## **Notice of proposed grant of consent to transfer**

19. The Authority, pursuant to section 8AA(9) of the Act, gives notice that it proposes to grant consent to Transco in respect of the Proposed Transfers of each of the four relevant Additional Transco Licences.
20. Section 8AA(4) of the Act provides that the Authority's consent to a transfer of a licence may be given subject to compliance with such modification or other conditions as the Authority considers necessary or expedient. The Authority may grant its consent subject to a modification condition requiring or otherwise providing for the making of modifications to the conditions of a licence.
21. As such, the Authority gives notice that it proposes to grant consent to Transco in respect of the Proposed Transfers of each of the four relevant Additional Transco Licences subject to conditions requiring or otherwise providing for the making of modifications to each of the four relevant Additional Transco Licences as set out in this Notice, the Annexes and the explanatory document (including its appendices) which accompanies this Notice. The proposed modifications are discussed and explained in the explanatory document which accompanies this notice.
22. Details of the proposed modifications which it is proposed will be required to be made as a condition to the Authority's consent to the transfer each of the four relevant Additional Transco Licence in respect of the IDNs which are proposed to be transferred to Transco's four relevant wholly owned subsidiary companies, can be found in Annex 2 to this Notice and Appendices 7 to 8 of the explanatory document which accompanies this Notice.
23. A mapping table can be found in Appendix 4 to the explanatory document which accompanies this Notice. This table details in respect of each condition in Transco's licences, the modifications proposed. In summary, the table:
  - a. maps the current conditions in Transco Licences to the final version of the licence as proposed in this Notice. By way of example, and without limitation, Amended Standard Condition 17 (ASC17): Provision of services for persons who are of pensionable age or disabled or chronically sick: arrangements in respect of meters, of the Transco Licences is to be modified by proposing in substitution for ASC 17 a new

standard special condition applicable to both the NTS and DN GTs as Standard Special Condition A19. The equivalent standard condition is shown on the table as switched off. Following introduction of the new condition, ASC 17 would be removed from all of Transco's licences;

- b. shows any new conditions which are proposed to be introduced and the nature of the condition (i.e. whether it is proposed as a standard special condition or special condition). By way of example, and without limitation, Standard Special Condition A12: Joint Office Governance Arrangements which is proposed as a Standard Special Condition applicable to both the NTS and DN- GTs ; and
- c. shows any condition which is proposed to be switched off or removed from the Transco Licences. By way of example, and without limitation, Standard Condition 4C: Charging of Gas Shippers – Supplemental Connection charges is proposed to be removed from all of Transco's licences as it is time redundant.

The nature and effect of the changes set out in the mapping table are proposed in Chapters 4 and 5 of the explanatory document.

24. The reasons why the Authority proposes (subject to conditions requiring or otherwise providing for the making of modifications to each of the four relevant Additional Transco Licences) to grant consent to the Proposed Transfers are set out in the documents listed in Annex 1 to this Notice.

#### **Additional information – parallel section 23 notice**

25. Respondents should note that the Authority has today also published a separate but related notice under section 23(3) of the Act proposing to modify (in connection with the Proposed Transaction) the Original Transco Licence in respect of the NTS and the one Additional Transco Licence in respect of the RDNs<sup>6</sup>.

26. Without fettering the Authority's discretion, it is expected that the modification to the Original Transco Licence in respect of the NTS and the Additional Transco

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<sup>6</sup> Notice of proposed modifications to the Original Transco Licence and the RDN Additional Transco Licence published on the same date as this Notice pursuant to section 23(3) of the Act

Licence in respect of the RDNs, if made, would be made in parallel to the modifications to the four Additional Transco Licences in respect of the IDNs which are the subject of this Notice.

### **Representations and objections**

27. In light of the Proposed Transaction, Ofgem would particularly hope to receive comments on the proposed modifications to the four relevant Additional Transco Licences from, amongst others, potential DN purchasers and other interested parties.

28. Any representations or objections with respect to the Proposed Transfers must be made before 5.00pm on Friday 15 April 2005 and should be addressed to:

Sonia Brown

Ofgem

9 Millbank

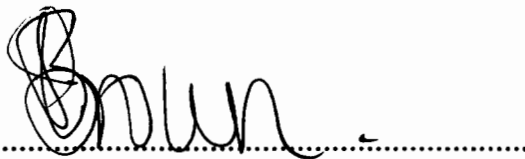
London

SW1P 3GE

Email: [Helen.connolly@ofgem.gov.uk](mailto:Helen.connolly@ofgem.gov.uk)

29. Respondents are free to mark their reply as confidential, although we would prefer, as far as possible, open responses that can be placed in the Ofgem library. Ofgem would also prefer that non-confidential responses are sent electronically so that they can be placed on the Ofgem website.

30. If you wish to discuss any aspect of this Notice, Helen Connolly (telephone 020 7901 7267) would be pleased to help.

A handwritten signature in black ink, appearing to read 'Sonia Brown', is written over a horizontal dotted line.

**Sonia Brown**

**Director, Transportation**

**Duly authorised on behalf of the Authority**

**14 February 2005**



## Annex 1

### 1. REASONS FOR PROPOSED GRANT OF CONSENT

The reasons why the Authority proposes to give its consent to the Proposed Transfers are set out in the following documents published by the Authority:

- 1.1 *National Grid Transco – Potential sale of gas distribution network businesses. Formal consultation under Section 23 and Section 8AA of the Gas Act 1986 February 2005;*
- 1.2 *Notice of proposed modifications to the Original Transco Licence and the RDN Additional Transco Licence published on 14 February 2005 pursuant to section 23(3) of the Act;*
- 1.3 *National Grid Transco – Sale of gas distribution networks. Authority Decision. Transco plc applications to dispose of four gas distribution networks;*
- 1.4 *Direction issued by the Authority on 1 February 2005 re modification of the price control conditions in each of Transco plc's six gas transporter licences;*
- 1.5 *DN Sales: Open Letter to Transco regarding credit cover arrangements for gas transportation use of system and connection charges 17 December 2004;*
- 1.6 *Erratum to Final Impact Assessments 2 December 2004;*
- 1.7 *National Grid Transco– potential sale of gas DN business – Licensing: Next Steps – Formal consultation under section 23 and informal consultation under section 8AA of the Gas Act 1986;*
- 1.8 *National Grid Transco – Potential Sale of Gas distribution network businesses – Final Impact Assessment – November 2004;*
- 1.9 *National Grid Transco – Potential sale of gas distribution network businesses – Final Impact assessment – Appendices – November 2004;*
- 1.10 *Transco plc – Form of five new additional GT licences granted to Transco plc on 5 November 2004 – 5 November 2004;*
- 1.11 *Transco plc – Notice of the grant of five new additional gas transporter licences – 5 November 2004;*

- 1.12 *Joint Ofgem and DTI open letter – Sale of NGT's Local Gas Distribution Networks (DNs): Issue of an exemption from a shipper's licence – 4 November 2004;*
- 1.13 *DN Sales: Ofgem note on initial draft of private CLM licence condition – 19 October 2004;*
- 1.14 *Open letter: updated timetable for potential gas distribution network sales project – 15 October 2004 – 238/04;*
- 1.15 *DN Sales: Gas distribution price controls further clarification – 6 October 2004;*
- 1.16 *DN Sales: National Grid Transco – potential sale of gas distribution network businesses – publication of NGT's initial drafting of proposed new NTS/GT licences – 15 September 2004;*
- 1.17 *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;*
- 1.18 *Open letter on Special Condition 18 – 26 August 2004;*
- 1.19 *Ofgem preliminary position on business separation requirements to apply between distribution networks – 20 August 2004;*
- 1.20 *Offtake arrangements, conclusions document on framework – 13 August 2004 – 199/04;*
- 1.21 *Interruptions arrangements: conclusions on document framework – 13 August 2004 – 198/04;*
- 1.22 *DN Sales: open letter to NGT, potential DN purchasers and other parties on licence amendment process – 5 August 2004;*
- 1.23 *DN Sales: Ofgem position paper on pensions – 2 August 2004;*
- 1.24 *DN Sales: Open letter on environmental liabilities – 23 July 2004;*
- 1.25 *Transco plc – Notice of proposed grant and proposed modification of 8 new additional gas transporters licences – 22 July 2004;*

- 1.26 *Open letter: timetable for potential gas distribution network sales project – 16 July 2004;*
- 1.27 *National Grid Transco – potential sale of gas distribution network businesses. Interruptions arrangements: regulatory impact assessment. 30 June 2004 - 146/04;*
- 1.28 *National Grid Transco – potential sale of gas distribution network businesses. Offtake arrangements. Regulatory impact assessment. 11 June 2004 - 131/04;*
- 1.29 *National Grid Transco – potential sale of network distribution businesses Agency and governance arrangements – 28 May 2004 120/04;*
- 1.30 *National Grid Transco – potential sale of network distribution businesses. Allocation of roles and responsibilities between transmission and distribution network – 28 May 2004 – 119/04s;*
- 1.31 *DN Sales: RIA on options for exit reform industry letter – 20 May 2004;*
- 1.32 *National Grid Transco – potential sale of network distribution businesses. Allocation of roles and responsibilities between transmission and distribution networks – regulatory impact assessment. 20 April 2004 – 84/04;*
- 1.33 *National Grid Transco – potential sale of network distribution businesses. Agency and governance arrangements: regulatory impact assessment. 20 April 2004 – 83/04;*
- 1.34 *Open letter on Gas Distribution Price Controls – 16 March 2004;*
- 1.35 *National Grid Transco – potential sale of network distribution businesses: next steps. 17 December 2003 – 170/03; and*
- 1.36 *National Grid Transco – potential sale of network distribution businesses. 31 July 2003 – 77/03.*
- 2. Copies of the above documents are available (free of charge) from the Ofgem Research and Information Centre (telephone 020 7901 7003) or on the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).

## Annex 2

### Explanation of the proposed changes to the four relevant Additional Transco Licences relating to the IDNs

The first four columns of the table explain the changes which are being proposed as part of the Authority's proposal to grant consent to Transco under section 8AA of the Act to transfer the four Additional Transco Licences which relate to the four IDNs which are proposed to be hived-down to four wholly owned Transco subsidiaries. The actual proposed texts of the modified and restructured licences are set out in Appendices 7 to 8 to the explanatory document which accompanies this Notice (the "**Explanatory Document**").

For information only, the final two columns of the table below show the proposed changes to the Original Transco Licence (in respect of the NTS) and the RDN Additional Transco Licence (in respect of the RDNs) which have been proposed by a separate but related notice which has been published by the Authority (pursuant to section 23 of the Act) at the same time as this Notice.

Licence conditions	The Additional Transco Licence re the North Distribution Network <sup>1</sup>	The Additional Transco Licence re the Scotland Distribution Network <sup>1</sup>	The Additional Transco Licence re the South Distribution Network <sup>1</sup>	The Additional Transco Licence re the Wales and West Distribution Network <sup>1</sup>	The Original Transco Licence re Transco NTS <sup>2</sup>	The RDN Transco Additional Licence re the RDNs <sup>3</sup>
Standard Conditions applicable to all NTS and DN GTs (Set out in Appendix 7 to the Explanatory Document ) <sup>4</sup>	✓	✓	✓	✓	✓	✓
Standard Special Conditions applicable to all NTS and DN GTs – Part A (Set out	✓	✓	✓	✓	✓	✓

in Appendix 8A to the Explanatory Document )						
Standard Special Conditions applicable to the NTS GT – Part B <sub>5</sub> (Set out in Appendix 8B to the Explanatory Document )	×	×	×	×	✓	×
Special Conditions applicable to the Transco NTS GT – Part C (Set out in Appendix 8C to the Explanatory Document )	×	×	×	×	✓	×
Standard Special Conditions applicable to all DN GTs – Part D <sub>6</sub> (Set out in Appendix 8D to the Explanatory Document )	✓	✓	✓	✓	×	✓
Special Conditions Part E Part 1 applicable to the RDNs only	×	×	×	×	×	✓

(Set out in Appendix 8E (1) to the Explanatory Document )						
Special Conditions Part E Part 2 applicable to the North of England DN only (Set out in Appendix 8E (2) to the Explanatory Document )	✓	×	×	×	×	×
Special Conditions Part E Part 3 applicable to the Scotland DN only (Set out in Appendix 8E (3) to the Explanatory Document )	×	✓	×	×	×	×
Special Conditions Part E Part 4 applicable to the South of England DN only (Set out in Appendix 8E (4) to the	×	×	✓	×	×	×

Explanatory Document )						
Special Conditions Part E Part 5 applicable to the Wales & West DN only (Set out in Appendix 8E (5) to the Explanatory Document )	X	X	X	✓	X	X

<sup>1</sup> This licence is being modified as part of this Notice. Proposed Special Standard Condition E11 (Amendment to Credit Rating of the Licensee) in this licence augments Proposed Standard Special Condition A38 (Credit Rating of the Licensee) and applies to the IDNs in the period between hive down and share sale). This does not apply in the Original Transco Licence or in the RDN Additional Transco Licence.

<sup>2</sup> This is the Original Transco Licence which is being modified as part of a separate but related notice published by the Authority pursuant to section 23(3) of the Act at the same time as this Notice.

<sup>3</sup> This is the RDN Additional Transco Licence which is being modified as part of a separate but related notice published by the Authority pursuant to section 23(3) of the Act at the same time as this Notice. Proposed Standard Special Condition E10 (Separation of NTS and DN Distribution Network Businesses) in this licence applies to the RDN Additional Transco Licence only and does not apply to the IDNs.

<sup>4</sup> It should be noted that certain Standard Conditions will be switched off in the NTS and DN GT licences. These are explained in Appendix 4 to the Explanatory Document which accompanies this Notice.

<sup>5 & 6</sup> It should be noted that paragraphs 1 to 4 and 8 of proposed Standard Special Conditions B1 and D1 will be operative in all licences.