



Sonia Brown,
Director, Transportation,
Office of Gas and Electricity Markets,
9 Millbank,
London

And,

Richard Todd,
National Grid Transco,
NGT House,
Warwick Technology Park,
Gallows Hill,
Warwick.

Dear Sonia and Richard,

Gas distribution network sales – Consultation on network code arrangements

Please find herewith Gemserv's response to Sonia's letter dated 4th March.

As appropriate we have followed the layout provided by NGT. Comments are provided on; Standard Special Licence Conditions 11 and 12, the Joint Governance Agreement, the Agency Services Agreement, Modification Proposal 0745 and the UNC Modification Rules.

Should you wish to discuss any aspect of this response please do not hesitate to contact me or Richard Gray (richard.gray@gemserv.co.uk).

Yours sincerely,

Ken McRae,

Commercial Manager (Gas & Water)
Gemserv
0207 090 1012, or,
(ken.mcrae@gemserv.co.uk)



Standard Special Condition A11 Network Code and Uniform Network Code

Gemserv supports the introduction of the additional relevant objectives in paragraph 1 and in respect of 1(f) proposes that an economic test should be included alongside that of efficiency for implementation and administration of the network code/UNC.

Paragraph 2 clarifies that the relevant objectives set out in paragraph 1 do not apply to a proposal to modify the modification procedures. Rather, such a proposal is to be tested against paragraphs 9 and 12. Gemserv believes this to be a restrictive and inadequate provision for judging the desirability of proposed changes to the modification procedures. Paragraph 9 can only provide a starting point. It sets out basic requirements that the modification procedures must satisfy but it doesn't provide guidance on how the procedures might better develop over time.

There are in existence far better potential objectives for changes to the modification procedures. The Principles of Good Governance published by Ofgem in "Gas Retail Governance – Further Consultation June 2003" are an excellent example. If, for some reason Ofgem feels it inappropriate to include this within the licence then the incorporation of paragraphs 1(c) and 1(f) as relevant objectives for such proposals would give scope to introduce concepts such as effectiveness, efficiency, transparency, inclusivity, accountability and consistency which are absent from paragraphs 9 and 12.

It is unclear why the requirement to have alternative proposals has now been incorporated in paragraphs 9(c), 10(b) and 11(b) as in practice these have proved confusing and difficult to administer. This requirement has also given rise to the extremely doubtful inclusion in the Modification Rules of the ability to raise an alternative urgent proposal which may contravene paragraph 9(g) of this Condition.

Gemserv notes that paragraph 15(a)(iv) does not require that any recommendation regarding implementation of a proposal be made, or that where one is made that it should be made by any particular person or body. Such questions are left to the requirements of the modification procedures.

Standard Special Condition A12. Joint Office Governance Arrangements

Gemserv believes that this Condition should be entitled "Joint Governance Arrangements" as it does not require a Joint Office to be created.

In paragraph 1(a) transporters are required to "establish, operate and develop" joint governance arrangements. Gemserv believes this wording may be restrictive and proposes that it may be more efficient and economical if transporters were required to "establish, develop and operate (or procure the operation of)" the arrangements.

Paragraph 2(c) requires the joint governance arrangements to be such that they "avoid undue discrimination or preference as between the relevant gas transporters."



Gemserv proposes that this concept should be extended to shippers by wording to the effect that they “avoid undue discrimination or preference as between the relevant gas transporters and as between the relevant gas transporters and relevant gas shippers.”.

Joint Governance Agreement (JGA)

- General 1. In common with the Modification Rules the JGA has no provision for external (User) involvement in the operational management of the JO. If the JO is to operate independently then it is imperative that there should be transparency in its governance. Perhaps the User Members of the Modification Panel could nominate one of their number to attend the Committee as a non-voting member?
- General 2. It is disappointing that the JGA does not seem to allow the Committee to obtain services from competitive sources at any point in the future as anticipated in DISG 33 (and elsewhere). This seems at odds with developments elsewhere where competition in service provision is becoming the norm. As the JGA binds the Parties to use the JO it will require significant revision in the period leading up to the next Price Control.
- General 3. There do not appear to be any standards of service or measures by which the JO's performance will be judged. The Parties will have little opportunity to objectively judge the quality of the service received or its value for money.
- General 4. Staffing the JO on a secondment basis is pragmatic but may have undesirable effects. For example, the JO doesn't appear to have any right to select candidates, it merely receives the secondees chosen by the Parties. The Parties may be reluctant to second the right calibre of staff who it will in any case be difficult to attract if the secondment isn't clearly seen to be on a career path with re-entry into the employer's structure at an appropriate level of seniority. There is also likely to be disruption in service commensurate with a churn in secondees.

Agency Services Agreement (ASA)

- 5.1 Requires all changes to be progressed via the Change Control Procedure in Schedule 10. This includes changes to the provisions of the agreement itself which is supported by para 2.2.(a) of Schedule 9. However Schedule 10 is written from the perspective of Network Operators requesting a change and may not work for changes raised by the Service Provider. Also, it is unclear how the cost of Service Provider changes will be dealt with.



Interestingly the definition of “Change” in Schedule 1 is limited to the Services and Performance Indicators, i.e. excluding the Agreement itself.

Schedule 7

1.2

The Service Provider is permitted to uplift its costs by a 6% profit margin. This is generous when set against the more common RPI – x% arrangements enjoyed by the Network Operators and by Ofgem. Such an arrangement is unlikely to act as an incentive to drive down costs or for the introduction of efficiencies.

Schedule 9

1.3.1

Makes it clear that the Contract Managers appointed by each Party will meet as the Change Management Team and review the priority of outstanding Changes. There is a danger that such a “closed” meeting would result in a series of priorities which did not accord with the wishes of the Uniform Network Code Modification Panel and/or the Network Code Committee.

Modification Proposal 0745 “Modification of the Network Code into Transco’s individual (Short Form) Network Code

Gemserv is concerned that this proposal was proposed for, and granted, Urgent status under circumstances where it could and should have followed the normal procedures.

NGT put forward as it’s reasons for requesting Urgency that the proposal was linked to an imminent date related event, namely the divestment of some of its DN businesses, which requires a complex chain of steps to be completed. Secondly, NGT advanced the argument that failure to complete these steps in sequence could result in significant commercial impact upon itself and its prospective buyers with consequent loss of benefits to customers.

Whilst not seeking to challenge either of these statements Gemserv believes that they are an economical representation of reality. The overall timing of the DN sales process has been largely under NGTs control and the need for (and largely the shape of) this proposal must have been understood months prior to 22nd February when it was actually raised. It is significant that NGT has not argued that it was unaware of the need for, or unable to raise, this proposal at an earlier date.

Naturally the timing of the implementation of this proposal is critical but it could and should have been raised in good time to progress through normal procedures. In practice, possibly as a result of an oversight, NGT delayed the proposal to the point where a need for urgency was paramount. This clearly placed Ofgem in a difficult position and has resulted in a most unwelcome precedent.

Gemserv now believes it incumbent upon Ofgem to issue clarification on the meaning of an “imminent date related event” within the context of its Urgency Criteria. The



intention cannot have been to create circumstances as apply to 0745 in which a proposer, who is in full possession of the facts, has sufficient time to raise a proposal without the need for urgency yet delays doing so. This could be viewed as a manipulation of the existing rules to gain benefit and as such is poor governance.

UNC Consultation Response – Respondent Name : Gemserv

Modification Rules

1.1 (d) & 1.1 (e) Appear to allow a Third Party Participant to raise an alternative proposal to any existing proposal, without limitation. This is clarified in 6.4.1(a) but it would be helpful to address 1.1. (d) & (e) to avoid confusion.

Defined Terms A “Panel Majority” is a simple majority of votes exercisable at a quorate meeting. Para 5.5.1 defines a quorum as 2 x GTs, plus 2 x Users capable of exercising 6 votes between them. In practice then a valid Panel Majority could mean 4 GT (or User) votes in favour. It would be preferable to avoid such extreme (if unlikely) possibilities, one solution would be to require at least one User and one GT vote within the 6 in favour. Such an additional requirement could fall away where there are equal numbers of votes exercisable.

5.1.3 This is new and limits the Panel to determinations as set out in the Rules. This limitation doesn't this carry over to the Network Code Committee (General Terms Section B para 10.1.2). On the face of it this appears to permit the NCC greater latitude than the Panel.

5.5.3 For clarity this para should read “.....at which a quorum is and remains present.....”

6.4 This paragraph reflects the new requirements in Standard Special Condition A11 of the GT licence. However alternative proposals have in the past been found generally unnecessary and overly complex as it is as easy to raise another proposal. However, assuming they are to be permitted the Rules are inadequate upon how they should be treated, e.g. are they to have separate Draft/Final Modification Reports, etc.

6.4.1 It is impractical to permit an alternative to an Urgent Modification since the community isn't aware of the existence of an Urgent Modification proposal until it has been issued for consultation, i.e. following Ofgem's agreement that it is Urgent. Ordinarily a period of 10 days is allowed for consultation, 6.4.1 allows up to 5 days from the issue of the Urgent proposal for an alternative to be raised. There are three problems;

1. This para effectively fetters Ofgem's discretion concerning urgent status as the alternative goes straight to consultation.



2. By implication the alternative must be subject to the same timetable as the original which means there may be less than 5 days to respond to the alternative.
3. There are no effective checks on the quality or purpose of such an alternative as it bypasses scrutiny by Ofgem and by the Panel.

However, if Urgent alternatives are to be permitted the first sentence should read “In respect of any Modification Proposal which is an Urgent Modification Proposal or Third Party Modification Proposal.....”

since Third Party Participants cannot raise Urgent proposals.

- 6.5.1(b) What is the purpose of including “.....subject to paragraph 6.4.....”? What is the purpose of the reference to paragraph 12.4 which only applies to a withdrawn User proposal adopted by a GT(s)?
- 7.3.1(a) Why and how does the Panel “propose” a SME? Shouldn’t it “determine”? What would happen if the Panel was unable to agree on a SME?
What would happen if there were no relevant SMEs (or none at all) on the Register? See also para 9.10 (only applicable if the SME has failed in its duties) which has the GTs picking up responsibility so shouldn’t references to SME say “or Transporters, as the case may be,”?
- 7.3.1(b) Why and how does the Panel “request” a Transporter to procure legal resources? Shouldn’t it determine that the Transporters should request....
What would happen if the Transporter failed to procure legal resources?
How does this fit with 9.8 (see below)?
- 7.5 (and elsewhere) The default for Proposals which the Panel fails to progress is to go into a Workstream. This is fine for the first occurrence but an alternative default is required. Modification Proposal 731 suggested that Consultation should be the second stage default.
- 9.1.1 Replace “an” with “a”.
- 9.4.1 This paragraph is very vague, it begs several questions; how is an impact on UK Link to be identified, by whom, and perhaps most importantly by when in the process?
- 9.4.2 If the initial impact assessment report is not incorporated into the draft Modification Report then it will have limited visibility and consequently be of limited value. Perhaps this paragraph cannot bind the Agency but it could place a time limit upon the Transporters that would be “backed off” via the Agency Agreement. As a non-binding initial impact assessment and not a detailed systems specification is required the time allowed for its production could be the first 10 of the 15 working days set out in paragraph 9.3.1 for the



preparation of the draft Modification Report which timescale is supported by paragraph 2.2.1 of Schedule 10 of the Agency Agreement.

- 9.5 Amongst other things this section introduces a requirement that the Modification Panel should make a recommendation to Ofgem concerning implementation of the proposal. Such a requirement cannot be said to stem from the sale of Distribution Network businesses and there is no rationale for it at this juncture. Its introduction would bring about a fundamental change in the role of the Panel that is unnecessary in the present context and has not been sufficiently consulted upon.
As has been pointed out elsewhere by NGT, shippers (Users) do not share GTs licence obligations regarding the Network Code. It is possible that User Members would not vote for implementation of a proposal which Transporters believed better facilitated their licence relevant objectives thereby frustrating such a recommendation going forward. This is clearly inappropriate and the requirement in its present form can and should be removed from the present drafting. It is open for it to be re-introduced and properly considered as a modification proposal, if required, at another time.
- 9.5.1 It is assumed that the intention here is that the SME should submit the final Modification Report to the Secretary 15 working days after the close out for representations. However, the as drafted the obligation is merely that "...the Transporters shall procure that the SME shall prepare..." within 15 days. This is ambiguous and should be re-worded.
- 9.5.2(a) Members may make a response regarding the adequacy of treatment of representations "...with regard to the Relevant Objectives;"; this seems odd and restrictive. The treatment of representations is independent of the relevant objectives.
- 9.8.1 Subject to paragraph 7.3.1(b), paragraph 9.8 requires "The Transporters....." to prepare legal text only after the Panel has decided to recommend implementation.
Paragraph 7.3.1(b) requires that "...one of the Transporters..." procures legal drafting "...for the draft and final Modification Reports..." in respect of each proposal that is sent to consultation by the Modification Panel.
Paragraph 9.6.1(a)(ii) says that the draft Modification will set out "the text, if provided pursuant to paragraph 9.8;".
Clearly these paragraphs are contradictory and do not work!
The general rule should be for text to be provided in the draft Modification Report for the purposes of consultation.
- 10.1.1 Requires "the Transporters" to appoint a SME in respect of a Modification Proposal that "a Transporter considers..... should be treated as Urgent" but it would appear that User raised Urgent proposals do not have a SME appointed (and certainly not at the same point in the process)!



- 12.4.1 Allows Transporters to vary a User proposal that has been adopted in accordance with paragraph 6.4. However, paragraph 6.4 also allows Users to adopt withdrawn proposals (regardless of the original proposer) but 12.4.1 appears to deny Users the opportunity to vary such adoptive proposals. There is no logical reason for this imbalance in treatment. NGT has argued in the past that as only GTs have licence obligations regarding the Relevant Objectives it would be inappropriate to allow such variation. This argument is inconsistent with paragraph 9.5.
- 12.7.1 As the modification rules are now part of the UNC disapplication of a “rule” is disapplication of part of the UNC. This is not a satisfactory state of affairs and in any event it seems improbable that the Authority would be able to agree to any application to disapply