

TOTAL GAS & POWER LIMITED

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Gas distribution network sales - Consultation on network code arrangements

Dear Sonia,

Total Gas & Power Limited (TGP) welcome the opportunity to comment on the above proposals to make fundamental changes to the current transportation licences in order to facilitate the sale of four of Transco's local gas distribution networks.

On the assumption that this consultation is the formal consultation on the Uniform Network Code (UNC) arrangements in March 2005 that was referenced in the Authority Decision document (paragraph 3.172) published February 2005, we are concerned about the period that has been given for consultation. We believe the consultation period should only commence once a finalised UNC has been released which in our view is the 29 March 2005. We would then expect a minimum 4 week consultation in line with Ofgem's consultation principles. Stage 1 of the process can only be considered as the finalisation of Transco's work on the development of the UNC as this has been the first opportunity to see a full version of the UNC, particularly in its restructured form.

We have, both individually and through the Gas Forum and Modification Panel, raised concerns about the process that has been followed for the development of the new network code arrangements. There has been very little differentiation between the process of agreeing the fundamental minimum level of change needed to support the sale of one or more distribution networks ("the business rules") and the process of developing the legal text needed to support these rules.

Whilst the December consultation ("Towards a new industry framework") laid out some of the proposed business changes needed, it was not complete. Subsequently changes have been discussed in both the UNC Development Forum and the UNC Legal Text meetings. However no attempt was made to maintain a "current" version of the business rules until, after pressure from Shippers, a document was released listing changes made subsequent to the December consultation. Whilst this was useful we have still found it very difficult to understand the baseline from which to review the proposed finalised legal text. A complete set of all business rule changes should still be provided as part of the UNC documentation and this would be helpful for the next version of the UNC to be delivered on 29 March 2005.

We strongly believe that there were no reasonable grounds for not following the standard Modification Process that has been in place since the Network Code was first developed. This would have developed a clearer set of business rules that the industry would have been able to recognise as ones in which it



had been fully involved. Only at this stage should the legal text have been produced to be sent with the newly developed rules for consultation by the industry.

As such we reserve our right to come back at any later time to request changes to the legal text should it be discovered that such changes could not be related back to changes to business rules which had been properly developed and submitted to the industry for consultation. We would also expect such changes to be handled under the "Consent to modify" arrangements rather than requiring modification proposals to be raised.

With regard to the Modification Proposal 0745, we believe the time to comment on this proposal is once we have seen the completion of the current process to determine the new network code arrangements, including the Authority's decision, as until this point has been reached we will not be able to fully assess the potential impact on TGP's business of the revised commercial arrangements. As such we believe that by the consultation close-out date of the 12th April 2005 we will not be in a position to know the final content of the UNC that will be approved by the Authority and thus we would expect to respond against the modification. Our view on this may change when we see the extent of any revisions proposed by Transco at the end of this UNC Stage 1 consultation.

Uniform Network Code – Modification Rules

1.1 (e) We do not see why Third Party Participants are being excluded from this paragraph with respect to an Individual Network Code (also affects 6.1.2)

3.2.1 Panel Composition

We have some reservations about the proposed 5/5 split between Transporter and Shipper representatives, particularly as to why Transporters are allowed an effective 1 to 1 representation whilst Shippers have to reduce the representation they have enjoyed to date. However, taking into account the proposed voting change to Panel Majority we believe it could be workable for reaching determinations on the types of activities that the Panel has historically performed.

We do not support the 5/5 split for Panel recommendations should these be introduced (see later). Whilst the transporter representatives can be considered to be fully accountable to the transporters we fail to see how 5 shipper members can (or even should) consider themselves to be capable of representing the shipping community when it comes to commenting on the suitability of modification proposals that could have significant commercial impact on that community.

5.6.1 It is not clear how the deputy chairman is appointed

6.1.2 It is not clear why Third Party Participants have been excluded from this list

6.4.1 (b) If Third Party Participants are included in 6.1.2 then the text of 6.4.1 (a) should replace that in 6.4.1 (b) substituting references to 6.1.1 with 6.1.2

6.4.2 The text in 6.4.1 (a) and (b) should be replicated in 6.4.2 (a) and (b)

8.6.2 Should this read 'If two (2) or more Modification Proposals' bearing in mind the potential for numerous proposals as a result of the introduction of alternatives in 6.4?

9.1.2 We do not understand the reference to "under this paragraph 9" in this paragraph

9.5.1 (c) The introduction of this could add considerable delay (up to 1 month) to the delivery of the Final Modification Report to Ofgem. What is the justification for this delay?

9.5.2 (b) TGP remain strongly opposed to the introduction of a Modification Panel recommendation at this time. We have previously documented our views to both Transco and Ofgem¹. In summary the



motivation throughout the DN sale process has been to make the minimum change possible in order to facilitate the distribution network sale. We are not aware of any statutory/licence requirement for a Panel recommendation and therefore see no reason for the sale to require such. Further we believe its inclusion, at this time, can only reduce the efficiency of the governance process.

The governance regime has worked reasonably well without this to date. Whilst a number of recent modification proposals have been raised to improve the governance process, none of these have suggested the need for a Panel recommendation. A group of shippers and transporters recently confirmed in writing to Ofgem that they did not require Panel recommendation for the purposes of the sale. There has been no reference to a Panel recommendation in any of the Authority's decision documents and there has been no specific request for views on this in any of the DN sale consultations. Previous papers and discussions have introduced the concept of a Panel recommendation but all of these have referenced linkage with the appeals process to be developed following the Energy Act requirement. However the DTI has clearly identified that the current Network Code does not have a Panel recommendation and has therefore consulted on alternative arrangements. Additionally, Ofgem has confirmed that "the timing and nature of the DTI's decision in respect of the appeals mechanism is, and should be, totally independent of Ofgem's process in relation to the UNC modification rules and DN sales more generally"². In line with this, Ofgem have suggested that the governance arrangements should be reviewed once the DTI have published the outcome of their consultation on the Appeals process.

Further Ofgem have repeatedly stated that they would not be influenced by a Panel recommendation, their analysis being concentrated on the points made within individual representations. Thus a Panel recommendation at this time would be highly inefficient as it would introduce both a delay to the submission of the FMR to Ofgem and would require the use of significant industry resource to carry out the detailed analysis needed to be undertaken by Panel members for no perceived purpose.

We understand the desire for the Transporters to make a recommendation, it being required in their licences but believe this can be completed by them through the Joint Governance Agreement.

9.6.1 (q) As we do not support a Panel recommendation neither do we support this paragraph. Further it would not be possible to record the number of votes against as the Panel would be requested to make a determination as to whether a modification should be implemented. Thus only those panel members voting for implementation could be recorded.

Subject Matter Experts (SME's)

TGP are unconvinced of the need for SME's. To date the arrangements have generally worked well and Transco have always seemed to manage to provide sufficiently qualified resource to prepare modification reports. We believe this resource should continue to be provided by the Transporters and can be agreed through the Joint Governance Arrangements Agreement; we would leave it to their judgement to determine whether the full rigour of the SME Code of conduct is relevant. We do not therefore support the need for 7.3.1(a) with respect to the Panel proposing a Subject Matter Expert. Further we do not support the need for the Panel to determine the competence or otherwise of an SME as described in 9.1.4 (a).

Uniform Network Code – Other areas

General

Page numbering throughout the document is inconsistent - e.g. V-1, V-2 or Section A 1,2,3 etc

TGP do not believe that it is perfectly clear that in all instances when a Transporter's UNC refers to a supply point whether it is a supply point connected to that Transporters network? For example re TNI Supply Points, is the UNC absolutely clear in interpretation that a Transporter could only designate an Interruptible Supply Point as being a TNI Supply Point if that Supply Point was connected to that Transporter's network. It may be sensible to clarify this in the various Supply Point definitions



² Response to Gas Forum letter to the Department of Trade & Industry re appeals – Sonia Brown, Ofgem 17 March 2005

Section H Demand Forecasts

Whilst we recognise that H5.2.7 requires the Transporter to exercise reasonable skill and care in forecasting demand, we now believe that there should be a Standard of Service on Transco NTS in view of the potential for a deterioration in the quality of the Total System Demand forecast arising from an increase in the number of parties providing the component information.

Section J Exit Requirements

General

TGP believe the readability of this section of the UNC would be greatly improved if it were to be split into two sections, the first being general/common exit requirements and the second section relating to specific exit requirements necessary to address the DN/NTS relationship.

1.3.1 (d) Should “the downstream DN operator ...” read “ the downstream transporter ...”.

Uniform Network Code - General Terms

Section B – General

1.2.1 The wording of this paragraph appears to allow the network code of an individual Transporter to vary from the Uniform Network Code to the extent parts of the UNC may not apply and/or additional terms may be added. Regardless of this we would like confirmation that any proposals to disapply areas of the UNC and/or add additional terms will be controlled through the normal Modification Rules processes subject to paragraph 1.2 of the UNC Modification Rules.

Transition Document – Part IV Modification Rules

It is not clear why the revised governance arrangements, including Panel representation, come into force on the [1 May 2005] as at this time there will not be any independent transporters involved in the governance discussions.

Please contact the undersigned if you wish to discuss any issues raised in this representation.

Yours sincerely

(this letter has been sent electronically and is therefore not signed)

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