

TOTAL GAS & POWER LIMITED

Sonia Brown
Director, Transportation
Office of Gas and Electricity Markets
9 Millbank
London SW1P 3GE

Dnsalesgroup@ofgem.gov.uk

11 April 2005

Gas distribution network sales – Stage 2 of consultation on the network code arrangements

Dear Sonia,

Total Gas & Power Limited (TGP) welcome this further 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.

We note that following the initial 2 week period for review of the UNC, NGT have made some minor drafting changes following comments received but on the whole these changes have not been in the area in which our initial response of the 18 March 2005 focussed. As such many of the comments we made then we believe to be still relevant and are repeated in the following paragraphs. Additionally we have reinforced these comments where we believe this to be appropriate based on further changes or comments by NGT in their response to the initial review.

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 of more distribution networks ("the business rules") and the process of developing the legal text needed to support these rules. Normally the process of business rules followed by legal text is sequential but for the UNC it has been concurrent with instances towards the end where the new legal text has been proposed without any discussion on the business rules.

This has led to a situation where it has been difficult to understand the baseline from which to review the proposed finalised legal text and we continue to request that for documentation purposes a complete set of all business rule changes should still be provided as part of the UNC documentation. In essence this would have been the output from a properly constituted review group had the normal modification process been followed.

We continue to 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.

Uniform Network Code – Modification Rules

11 April 2005 (new)

Definition of Terminal Operators representative.

We note that this has been changed to exclude someone affiliated to a User who has a representative on the Panel. It is not clear why this has been done but if the change is agreed we believe it to be logical that this principle be followed in all the definitions of Panel representatives and should be applicable to both Users and Transporters. Hence the User representative should not be affiliated to a Transporter who has a representative on the Panel. Similarly the Independent Transporters representative and the Independent Suppliers representative should not be affiliated to either a Transporter or a User who are



represented on the Panel.

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).

11 April 2005 (update)

In NGT's response they stated that the text reflected the Licence and did not feel a change was necessary. We continue to disagree as from our reading of the current licence drafting, Third Party Participants are listed in both 10 (a) and 11 (a) of Standard Special Condition A11, as being allowed to raise proposals to both the UNC and to an individual transporter's network code (including both original and alternative proposals). These comments also apply to paragraphs 6.1.2, 6.4.1, 6.4.2 and 12.4

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.

11 April 2005 (update)

NGT comment that the 5/5 split produces a balanced panel capable of representing the parties on either side of the contract. However the UNC is not that clear cut in that DN transporters can be on either side of the contract in respect of NTS offtakes.

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.

11 April 2005 (update)

We note that NGT have commented on this in their response and have suggested that if "Users generally would prefer their votes to be exercised by more than five representatives this could be accommodated ...". In TGP's view this continues to miss the point that the 5/5 split allows for each Transporter to exercise their view but fails to allow all Users the same opportunity. In fact the NGT argument also allows for a smaller number of Transporter representatives on the basis that they do not individually need to be present on the Panel in order to be represented.

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?

11 April 2005 (update)

This view appears to be supported by NGT in their response and to get round this delay they have proposed fortnightly Panels as a solution. This reinforces our view that the introduction of a Panel recommendation and hence the need to table a Final Modification Report at a Modification Panel is inefficient compared to the current process. This will also increase costs for parties providing Modification Panel representatives and whilst Transport costs may potentially be passed through to Users, User costs will not necessarily be passed onto customers. It remains to be seen whether this will reduce User participation in the process.

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.

11 April 2005 (update)

NGT in their response have discussed at length the change to the present Transco recommendation regarding implementation of Modification proposals. In their own words "A minimum change would be to move to a recommendation being made by the GTs jointly". It is TGP's belief that the whole ethos of the UNC reform was to make the minimum change necessary to enable the sale to go ahead and therefore do not understand why anything further than this has been recommended by NGT. NGT then go on to argue that it is both economic and efficient for the Transco recommendation to be replaced by a Panel recommendation but they provide no supporting evidence for this statement. Everything TGP has argued to date suggests that the move to a Panel recommendation reduces efficiency in terms of extending the modification process and increasing the level of resource needed when Ofgem have made it clear on a number of occasions that they would not be influenced by the Panel recommendation but would continue to rely on their own analysis of the individual representations.

Finally NGT again refer to the DISG discussions to justify their proposal when it is clear that the only reason panel recommendations were introduced as a topic for debate was in connection with the anticipated appeals mechanism. To support this view we have done our own analysis of the DISG minutes relating to DISG meetings 9, 10, 12, 14, 16 and 17. The discussions culminated in an Ofgem paper to the DISG 17 on the 24 August 2004 entitled 'Rights of Appeal under UNC modification process' which itself anticipated (possibly incorrectly) how the right of appeal would work ahead of the actual DTI consultation in October 2004.

11 April 2005 (new)

9.6.1 (n) This paragraph requires the Transporters to agree, independently of the Panel recommendation, whether or not they believe a Modification should be implemented. As this agreement is not performed as part of the Panel procedures, it appears that the Transporters will be capable of drawing up their own rules as to how they will arrive at this decision. Assuming they can do this re the subject of whether or not to recommend implementation, it follows that they could establish their own rules for other areas of Panel business and hence reinforces the view expressed by ourselves and others in the letter to Ofgem dated 25 January 2005³ that Transporters do not have to have 5 representatives in order to be represented.

11 April 2005 (new)

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

³ UNC Review of Governance arrangements – letter to Sonia Brown from Alan Raper on behalf of UNC Development Forum attendees

TOTAL GAS & POWER LIMITED

9.6.2 We note that NGT have made a further change that in the event of 2 or more Mod Proposals proceeding together the Modification Panel has been given the role of deciding which of the proposals would better facilitate the Relevant Objectives. We do not recall this been discussed in any of the UNC forums and hence wonder why it has been introduced now. This appears to be a further extension of the role of the Panel and introduces further complexity and opportunity for delay. What is the proposed action if the Panel cannot agree?

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).

Our above response has been limited to Transco's UNC including its revised drafting. We have separately commented on the proposed Gas Transporter Licence Standard Special Conditions A11, A12 and A15 in our letter of the 11 March 2005⁴. With regard to the Network Code Urgent Modification Proposal 0745, we will be separately responding to Transco on this as it has been raised under the current Network Code modification procedures.

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)

Steve Ladle
Head of Regulation
Tel: 0207 318 6814
Steve.ladle@total.com

⁴ National Grid Transco – Potential sale of gas distribution businesses – Formal consultation under section 23 and section 8AA of the Gas Act 1986 – letter to Sonia Brown, Ofgem