



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

12<sup>th</sup> April 2005

Dear Sonia,

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

Gemserv responded to Stage 1 of this consultation on 18<sup>th</sup> March and would now make the following further comments in response to NGT's revised documents published on 29<sup>th</sup> March.

For simplicity, and to avoid detailed repetition, I will re-state the gist of the points in our Stage 1 document followed by NGT's response and then add our further comment.

**Joint Governance Agreement (JGA)**

1. We were concerned that the various proposed Licence changes, the JGA and the Uniform Network Code (UNC) Modification Rule changes seemed to place little or no incentive upon the transporters to ensure that the governance arrangements are operated and evolved in the most economic and efficient manner from the point of view of the industry as a whole.

We welcome NGT's response ref G008 in which it clarifies that in its view the JGA requires the transporters to set up the Joint Office (JO) but that, by implication at least, the JO will be acquiring services by competitive tender rather than performing them directly.

2. We queried the lack of User representation upon the JO Committee (its governing body). If the JO is to demonstrate its independence then its internal arrangements, objectives etc must be open to an appropriate degree of scrutiny by the industry.

NGT's response (ref G007) says that transparency and inclusivity is provided via the Modification Rules whereas the JGA is concerned with how transporters meet their obligations "which is not a matter for Users.". This not only misses the point about independence but it also rather confirms the industry's fears that NGT views the JO's function as being to protect transporters interests rather than to act as an independent arms length body serving the industry in pursuit of good governance. It is instructive that the JO is not answerable to the Panel and that the Modification Rules do not provide the Panel with control over it.



### UNC Modification Rules

We put forward 20 detailed points at Stage 1 of which 6 have resulted in drafting changes. Whilst we continue in the view that each of our comments deserves attention we wish to stress the following points.

1. 6.4.1 Permits an alternative to an Urgent proposal. We feel this is impractical and potentially fetters Ofgem's discretion in granting Urgent status. NGT has not responded to this point.
2. 7.5 (and elsewhere) provides a default of proceeding to a Workstream for proposals that the Panel fails to agree upon progressing. Whilst this is acceptable for the "first pass" it is inadequate as a default for subsequent failures to agree. Modification Proposal 0731 "Specific Amendments to the Modification Rules" contains an alternative set of defaults that allow progress to be maintained absent a Panel determination.

NGT has not responded to this point.

3. 9.4.2 Timing of production of the initial UK Link impact assessment report is very unclear. The report goes to the SME and transporters but there is no requirement for it to be incorporated into the Draft Modification Report where it would make a very useful contribution by informing responses to consultation.

NGT has not responded to this point.

4. 9.5 Introduces the requirement for the Modification Panel to make a recommendation to Ofgem regarding implementation of each proposal. This requirement is not directly necessary as a result of the DN Sales project.

Although NGT did not respond to this point, in his open letter of 29<sup>th</sup> March Chris Train defends the inclusion of this requirement at some length. As he points out, a minimum change would be to move to a recommendation made by GTs jointly, but in recognition that GTs may not always agree, a mechanism for a formal recommendation to be established would have to be created. He then goes on to say that it would be economic and efficient to have the views of shippers as well as GTs included and hence the transporter recommendation should be replaced with a Panel recommendation. Furthermore, Chris says that a Panel recommendation would be "efficient, equitable and inclusive, transparent and non-discriminatory."

There are a number of points we wish to make in response to this.

- The subject was discussed at the UNC Development Forum meeting on 18<sup>th</sup> January when all shippers present (including all three potential new Network Operators) supported a statement from NGT to Ofgem outlining the case for minimal change (i.e. no Panel recommendation inter alia).
- As NGT has been at pains to point out in another context GTs have licence obligations to maintain and develop the Code but shippers do not. By exchanging a transporter view for a Panel view Transporters may put



themselves in an awkward position regarding their licence obligations in this area.

- If the Panel is unable to reach a majority position (which will be more likely than a majority or all of the GTs being unable to agree) then the present drafting will require a Panel recommendation to reject to go to Ofgem, even if GTs are unanimously in favour. If such unrepresentative results are likely then the arrangements cannot be said to be “efficient, equitable and inclusive, transparent and non-discriminatory.”
- As we highlighted in our Discussion Document “A model for the Uniform Network Code modification panel” (February 2005) the UNC Panel would be asked to make two very different types of determinations. It will, as now, make procedural decisions on how proposals will progress under the modification rules but it is also, under present UNC drafting, required to make a substantive recommendation to Ofgem regarding acceptance or rejection of each proposal. As the nature of, and consequences following, these two types of decision (procedural and substantive) are quite different they require different approaches which produce incompatible results when measured by efficiency, inclusivity transparency etc. and call for a “hybrid model” for decision-making which reflects those realities.

In our Stage 1 response we also made points in relation to Standard Special Licence Conditions A11 and A12 and Modification Proposal 0745 “Modification of the Network Code into Transco’s individual (short form) Network Code” which we assume Ofgem will respond to in due course.

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](mailto:Richard.gray@gemserv.co.uk)).

Yours sincerely,

A handwritten signature in black ink that reads "Ken McRae".

Ken McRae

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