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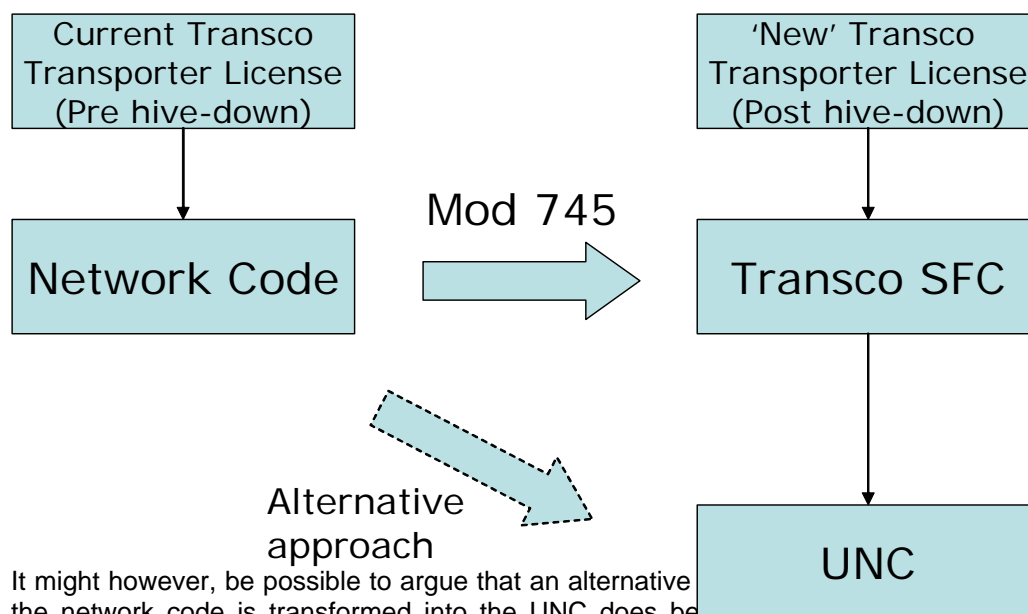
Tuesday 12th April 2005

Response to Modification proposal 745 Modification of the Network Code into Transco's individual ('Short Form') Network Code

Dear Julian

E.ON UK does not support the implementation of modification proposal 0745. Transforming the existing Transco Network Code into a short-form code (SFC) does not in itself better facilitate the current relevant objectives. The benefits in terms of facilitating competition in shipping and supply and the economic and efficient operation of Transco's pipeline system are likely to arise from the establishment of the uniform network code (UNC), under a new gas Transporter licensing regime. There are no licence obligations with respect to network code modifications that specifically allow a linkage between the new and old regimes.

Consideration of modification proposal 0745 against current relevant objectives



It might however, be possible to argue that an alternative the network code is transformed into the UNC does be

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Current relevant objectives

'New' relevant objectives

relevant objectives. But this is not an option considered in the proposal nor has Transco sought to justify why they believe the transformation of the Network Code into Transco's SFC is right transition mechanism.

Transco's current transportation licence does not appear to allow changes to be considered that contemplate a radically new industry structure. A similar issue was encountered in relation to consideration of changes to the England and Wales Balancing and Settlement Code (BSC) in electricity which contemplated the introduction of the British Trading and Transmission Arrangements (BETTA). To address this, changes were made to NGC's transmission licence, which introduced a new applicable BSC objective.

The Applicable BSC Objectives, as contained in Condition C3 (3) of National Grid Company's Transmission Licence includes objective e):

"the undertaking of work by BSCCo [Transco fulfils the equivalent role under the current Network Code] (as defined in the BSC) which is:

- (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and*
- (ii) **relevant to the proposed GB wide balancing and settlement code** [i.e. the newly contemplated trading arrangements in a similar way that the UNC represents the newly contemplated electricity trading arrangements in gas];
and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.*

A similar approach, i.e. introduction of a new temporary 'anticipatory' relevant objective contemplating the sale of gas distribution networks would seem to be necessary to permit modification proposal 0745 to be considered under the current Network Code relevant objectives.

In September 2004 E.ON UK put forward review modification proposal 0719 *"Changes to the Network Code to facilitate the sale of gas distribution networks"*. This proposal would have allowed the necessary changes to the network code to be assessed and a draft modification proposal to be developed under established procedures overseen by the Network Code Modification Panel. At the time we considered that without this proposal Transco would submit a fait accompli proposal late in the day which would not allow adequate time for users and other stakeholders to consider the form of such a proposal or indeed the right contractual mechanism for transitioning from the Network Code to the UNC. These predictions seem to have been proved correct.

Specifically modification proposal 0719 would have facilitated formal discussions as to whether the Network Code should transform into Transco's SFC, the UNC itself or whether there should be a complete 'clean break' between the current and 'new' regimes. Unfortunately without the co-operation of Transco and one shipper (whose parent happens to be one of the prospective buyers) progression of this proposal and development of a draft modification proposal has not proved possible.

It is disappointing, but not unexpected, to see Transco putting forward its own 'eleventh hour' alternative proposal, despite the fact that they could have adopted 0719 or at least submitted 0745 much sooner. Unfortunately, Ofgem's willingness to grant urgent status on grounds that, *"the proposal is linked to an imminent date related event* [only imminent because Transco's delayed submission of the proposal] *namely the divestment of part of Transco's distribution business into subsidiary companies,"* sets an unfortunate precedent for all users, - submit proposals 'late' to gain tactical advantage and avoid oversight from the Panel and

the normal modification timetable.

The ability of Transco to rapidly prosecute the most significant modification to the Network Code since its introduction in 1996 is in stark contrast to shipper's ability to promote even minor changes to the code. Shippers have little choice but to follow established non-urgent procedures, e.g. the recent series of shipper governance modifications, which were designed to improve such arrangements in anticipation of the post DN sales world.

In considering whether to approve this proposal we would urge the Authority to satisfy itself that this proposal does indeed better facilitate the current Network Code relevant objectives. It is E.ON UK's view that a change to Transco's current Transporter licence is required to introduce a new relevant objective anticipating the sale of gas distribution networks, before this proposal can be considered to meet such relevant objectives.

Yours sincerely

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