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27 April 2005

Dear Chris,

**Gas distribution network sales – Request for final written confirmation that the conditions precedent to the Authority’s conditional consent have been fully met**

As you will be aware, on 25 April 2005, the Gas and Electricity Markets Authority (Authority) met to consider whether Transco plc<sup>1</sup> (Transco) has fulfilled the conditions precedent elements of the Authority’s conditional consent<sup>2</sup> to the hive-down of four distribution networks (DNs) from Transco to four wholly owned Transco subsidiary companies.

At this meeting, the Authority concluded that the conditions precedent have been sufficiently satisfied to allow hive-down to occur on 1 May 2005 (or such other date as it may direct). However, the Authority also set out that final permission to undertake hive-down will not occur until the Authority has issued a further notice (which will attach the Implementation Directions<sup>3</sup>) setting out that its conditions precedent have been satisfied in full and granting permission for hive down to proceed.<sup>4</sup>

Consistent with the Authority’s decision, I am therefore writing to request that Transco provides to Ofgem a hive-down report. In this report, Transco should:

- ◆ update its letter of 18 April 2005<sup>5</sup> in which it set out its views on compliance with the conditions precedent and should:

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<sup>1</sup> Transco plc is a wholly owned subsidiary of National Grid Transco plc (NGT).

<sup>2</sup> The conditions precedent are described in Appendix 2 of the Authority’s Consent Directions. *National Grid Transco – Sale of gas distribution networks: Transco plc applications to dispose of four gas distribution networks Authority decision*, 1 February 2005, 21/05. (the “Consent Directions”) Appendix 2.

<sup>3</sup> This will comprise a cover letter, an implementation direction in respect of the Section 23 modifications which were made on 25 April, an implementation direction under section 8AA incorporating consent to transfer in respect of the modifications made under section 8AA on 25 April 2005. These implementation directions will address the coming into effect of urgent modification proposal 0745 decision. The section 8AA Consent and Direction, Section 23 Direction and decision on urgent modification proposal 0745 were published on Ofgem’s website on 25 April (<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale>)

<sup>4</sup> *Ofgem approves next stage of NGT’s sale of four of its gas distribution networks*, Ofgem open letter, 25 April 2005.

<sup>5</sup> *Transco update on process regarding conditions precedent of the Authority’s consent direction*, 18 April 2005 ([http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11193\\_TRANSKO\\_20050418\\_Ofgem\\_letter.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11193_TRANSKO_20050418_Ofgem_letter.pdf))

- specifically consider whether there has been any material change in circumstance which should be drawn to the Authority's attention; and
- restate whether in its view as at Friday 29 April they consider they have complied with the conditions and the basis of compliance.

As part of this assessment and without limitation, the Authority seeks particular information regarding the condition relating to consents and approvals<sup>6</sup> and the condition relating to the Health & Safety Executive's approval of Transco's safety cases<sup>7</sup>;

- ◆ update its letter of 18 March 2005 regarding the readiness of UK-Link and supporting systems to operate in a post-sales environment and should, without limitation, specifically consider whether there has been any material change in circumstance or issue which has arisen which should be drawn to the Authority's attention regarding hive-down and state its view on this issue as at Friday 29 April; and
- ◆ consider any other issue which it considers the Authority should be aware of in reaching a decision on whether to allow hive-down to proceed on 1 May 2005.

In order for hive-down to occur on 1 May 2005, we would expect to receive Transco's hive-down report by no later than 15.00 Friday 29 April 2005.

Transco's hive-down report will then be assessed. Depending on the content of the report, and without fettering its discretion, the Authority would expect to issue the notice (which will attach the Implementation Directions) on Friday 29 April 2005. If issued, this would permit hive down to occur at 06.00 on 1 May 2005 as set out in the Implementation Directions.

In issuing this letter, it is important to make clear that following the Authority's decisions in relation to the proposed transaction on 20 January 2005 and 25 April 2005, there can be no expectation on the part of NGT, Transco, potential shippers, suppliers, DN purchasers or any other interested parties as to any further decisions which the Authority may be required to take in relation to the proposed transaction, including without limitation, any decisions in respect of the whether the conditions subsequent have been met in full and any subsequent decisions regarding share sale. Nothing in this letter shall fetter the discretion of the Authority.

As we consider that this report will be of interest to a broad range of industry participants, this letter and Transco's response (insofar as it is not confidential) will be published on Ofgem's website. If you have any queries or comments, please don't hesitate to contact me or Jessica Hunt on 0207 901 7431.

Yours sincerely,

Sonia Brown  
**Director, Transportation**

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<sup>6</sup> Authority's Consent Direction, paragraph 21(k)

<sup>7</sup> Authority's Consent Direction, paragraph 21(e)