



BP Energy  
Witan Gate House  
500-600 Witan Gate  
Milton Keynes  
MK9 1ES

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Sonia Brown - Director of Markets  
Ofgem  
9 Millbank  
London  
SW1P 3GE

**Impact Assessment - 3rd Party proposal; Publication of Near Real Time Data at UK Sub-Terminals. Modification Proposal UNC 006 (formerly Network Code Modification Proposal 727)**

Dear Sonia

Thank you for the opportunity to comment on the above Impact Assessment (IA). BP's comments are made in addition to those provided previously in response to the Draft Modification Report for the Proposal.

This particular consultation is specific to UNC 006 (Mod 727) and considers the Impact Assessment prepared by Ofgem with respect to that Proposal. We note however that Ofgem references other information disclosure issues including their March consultation on Disclosure of Gas Production Information. We believe that it is important to recognise the distinction between these different consultations whilst considering the consultation document, and to be clear in separating out those facts that are specifically relevant to a decision relating to UNC 006 for those which may be associated but are not directly relevant.

It was our understanding that Ofgem intended to reach its conclusions on the separate Disclosure of Gas Production Information consultation before considering UNC 006 further, in order that a clear framework would exist within which this Proposal could be considered. It would therefore be beneficial if Ofgem would clarify when its conclusions will be published, and how Ofgem's decision on this Proposal will exist within the broader framework.

BP's views on this consultation can be summarised as follows, and are commented on further in subsequent sections of this letter

- Implementation of this Proposal would be inconsistent with agreements reached by the DTI chaired three Phase Information Disclosure Discussions in 2003/4, and could as a result undermine the confidence of upstream participants.
- In our view this proposal can be expected to jeopardise the significant gains made in the earlier three phase information release discussions.
- The IA has not fully considered the extremely significant and detrimental implications for the upstream /producer community, and therefore does not provide the fullest representation of the overall cost and benefits
- This Proposal if implemented would constitute an increase in risk to UK security of supply
- The benefits relating to proposal UNC 006 appear to be significantly outweighed by the potential risks
- We do not agree with the implication in the IA that the voluntary nature of current arrangements constitutes a particular risk that information will be withdrawn. It is our view that if existing voluntary arrangements remain in place, there is no reason to expect that information might be withdrawn.
- We believe there is no compelling case for implementation
- We believe that implementation of this Proposal should not be considered until after Phase III of the existing voluntary arrangements has been fully introduced, operated for a reasonable period and subsequently assessed
- Notwithstanding our belief that this Proposal should not be implemented, BP remains fully committed to working constructively with DTI, Ofgem and Transco to ensure that appropriate information disclosure arrangements are in place to facilitate the efficient operation of the UK gas market

## **EXISTING INFORMATION DISCLOSURE ARRANGEMENTS**

BP is fully supportive of, and has participated actively in, work to improve information disclosure relating to gas production and its delivery into the National Transmission System (NTS) to assist in the efficient functioning of the gas market.

During late 2003 and early 2004, through UKOOA, BP took part in wide ranging discussions initiated and chaired by the DTI, involving Ofgem, Transco and UKOOA members. As a result more information is now being made available under Phase III to assist Transco with the planning and operation of the NTS.

However, our support has always been on the understanding that information that could prejudice the commercial position of individual companies should not be published. During the 2003/04 discussions we understood this principle to be accepted by the DTI and Ofgem, as set out in documents including Ofgem's letter of 23<sup>rd</sup> October 2003. It was agreed that certain data under Phase III of the 2004 agreement should be published only in aggregated form in order to protect confidentiality and commercial sensitivity.

This Proposal, if implemented, would require Transco to publish data in disaggregated form. This would be inconsistent with arrangements agreed in the three phase information disclosure discussions.

It does not appear to us credible to propose to publish information at sub-terminal level when the prejudicial impact of doing so has been clearly recognised in previous discussions. In our view this Proposal if implemented could be expected to jeopardise the significant gains made in the three phase information release discussions.

## **SECURITY OF SUPPLY IMPLICATIONS**

The IA claims that this Proposal would have benefits for security of supply in both the short and long terms and, in addition.

With reference to short term security of supply, taking into account the fact that the baseline from which to assess the benefits is full Phase III implementation (the difference between UNC 006 and Phase III being very short term, detailed information), it is difficult to foresee the claimed short term benefits to security of supply arising from UNC 006

In relation to long term security of supply, we believe that the longer term the effects would only be theoretical. It is difficult to envisage that the decision to invest in major supply infrastructure

would be influenced by detailed differences in short term terminal flow data. We suggest that rather than impacting long term security of supply positively, it is possible that investors would be discouraged by the fact that once the project became operational, it would be impacted by the issues of confidentiality, liability and commercial sensitivity that would arise as a result of this Proposal which are mentioned elsewhere in this letter.

## **ROBUSTNESS OF EXISTING VOLUNTARY DISCLOSURE ARRANGEMENTS**

We believe that the consultation significantly over-estimates the risk of withdrawal of data if circumstances remain unchanged. We do not agree with the implication in Section 5.107 that the voluntary nature of current arrangements constitutes a particular risk that the information will be withdrawn. We believe that current arrangements are working well. If the existing voluntary arrangements remain in place there is no reason to expect that information might be withdrawn.

However, if circumstances change and producers were to be exposed to confidentiality, liability and commercial sensitivity issues (which were fully recognised and accepted by all parties in the 3 Phase Information Disclosure debate), they will be placed in a position by Ofgem of having to consider how best to protect their commercial interests.

It is important to be clear that there is not an existing problem that needs to be rectified relating to a danger of withdrawal of information, but more accurately a potential issue if this Proposal were to be implemented.

## **CONFIDENTIALITY, COMMERCIAL SENSITIVITY AND LIABILITY**

Throughout the three phase information disclosure discussions, there was recognition by and agreement among all parties that, if detailed information relating to individual company's operations were to be released deliberately or inadvertently to the market, it would cause legitimate and significant concerns regarding commercial confidentiality and liability for any resultant use of the information.

This recognition was clearly set out in Ofgem's letter of 23rd October 2003, DTI's Minister for Energy's letter of 7th November 2003, letters from UKOOA's individual members to both the Minister for Energy and Transco in March 2004 and Ofgem's letters of 23rd March and 15th April 2004 relating to its consultation on a temporary derogation to SC 4E of Transco's GT Licence.

It was for these reasons that agreement was reached in the Phase III discussions that data should be aggregated into two zones, North and South. This aggregation maintains the confidentiality of the information, a point which was recognised by all participants in the discussions.

In the event of non aggregated disclosure of information, it is likely that operators would have to consider whether it was necessary to recall information previously disclosed and to re-consider whether appropriate safeguards were in place to permit them to continue to provide the data. Ofgem may leave producers little alternative but to withdraw from voluntary provision. As producers will of course continue to provide the information to Transco for operational and safety reasons we should further make clear that, in the event of publication we would reserve all rights and remedies in respect of action for damages caused by the unauthorised release of this information.

It is also necessary to consider the question of liability for the accuracy and use of the data proposed to be disclosed. These are issues for which there are no simple answers. We understand that Transco has significant reservations, as do UKOOA members who are most unlikely to agree to this information being published if it exposes them to liability for its accuracy and use.

We do not believe that the costs and implications of potential breaches of confidentiality and the liabilities which may arise as a result of this Proposal have been fully considered or reflected in the IA.

Taking into consideration the value of gas flowing into the NTS, it would seem reasonable to predict that should liability and breach of confidentiality issues arise, the values involved would be many times higher than the value of the benefits attributed to this Proposal.

We believe that this Proposal would increase regulatory risk by exposing to the market those producers and operators with major pipeline and sub-terminal flows, thus revealing

commercially sensitive information. This would not meet Ofgem's stated intentions in its letter of 23rd October 2003.

## **TIMING IMPLICATIONS**

We believe it is important that the implications of the agreements reached under the three phase '03/'04 information disclosure discussions are fully understood before the further disclosure suggested in this Proposal is considered. This can only be done once agreed Phase III has been fully implemented and the effects subsequently analysed. Allowing this to be done would permit a more detailed judgement to be made as to whether the bulk of the benefits from increased disclosure of information are likely to arise from Phase III.

Considering the fact that Ofgem indicate in the IA that this Proposal would not be implemented for next winter or might in fact extend beyond winter '06/'07, it would appear eminently sensible to take time to consider fully the effects of Phase III implementation. Such consideration should lead to a more effective and accurate conclusion.

We therefore believe that implementation of this Proposal should not be considered until after Phase III of the existing voluntary arrangements has been fully introduced, operated for a reasonable period and subsequently assessed.

## **IMPACTS ON GAS PRODUCERS**

The IA has addressed the effects that the Proposal will have on the downstream market, but, in our view has not fully considered the consequences for gas producers and the upstream investment climate. This represents a significant shortcoming, with implications for security of supply.

The IA does not appear to take full account of the potential damage to the upstream sector, including prospective import projects, that could result from publication of the proposed information by Transco; nor of the consequences of that damage, both in terms of liability that could arise and, in the medium and longer term, of risks to the upstream investment climate of the UKCS and to the UK's security of supply should confidence in investment in such project be undermined by fears of disclosure of commercially sensitive data once the projects were operational.

With reference to potential contractual renegotiation that would result if this Proposal were to be implemented, as indicated in Sections 5.85 – 5.101 of the IA, there is a lack of analysis to date. There is therefore uncertainty as to costs and likely resource requirements, as well as to whether parties would be willing to renegotiate. What is clear is that a very large number of renegotiations would be required which would involve significant resource and costs, and impact the many parties to the large number of existing contracts in place.

## **POTENTIAL MARKET IMPACT**

The Proposal seeks the disclosure of information at sub terminal-level. We still remain to be convinced that disclosure at this level would provide additional benefit to the market, bearing in mind that the UK gas market is traded at NBP and not at sub-terminal level.

In addition BP does not support the publication of information which may prove to be inaccurate or misleading to the market. This will only serve to put pressure on prices and increase market volatility and thereby be detrimental to efficient functioning of the gas market. The Oxera report referenced above supports the view that price volatility may well increase.

## **IMPACT ASSESSMENT – COSTS AND BENEFITS**

We welcome the fact that Ofgem have undertaken an IA in relation to this Proposal but do however have a number of concerns relating to the costs and benefits set out in the document.

It is our view that Ofgem has not fully considered costs that would arise as a result of the Proposal including for example costs of contractual renegotiation and in relation to liability mentioned elsewhere in this letter.

We take this opportunity to highlight the following conclusions from the Oxera report which Ofgem were provided with a copy of separately on 20<sup>th</sup> May '05. The independent report was commissioned by UKOOA to assess the impact of the provision of real time gas information.

Its conclusions included the following.

- It is not clear that providing data on a sub-terminal basis ( Network Code modification Proposal 727) will offer net benefits, and could have a net negative consequence for the consumer
- Further increase in the provision of information may create excessive volatility which would be prejudicial to consumer prices
- The total benefits of providing information on gas flows into the NTS have been previously over-estimated and are up to 15 – 70 times higher than Oxera's estimates
- The current voluntary initiatives on information provision could benefit the consumer by up to £160 million over the next 15 years

We acknowledge that Ofgem only had a short period for consideration of the document prior to publication of this IA consultation, and therefore urge Ofgem to consider this report more fully.

In relation to the IA itself Figure 5.2 (the schematic illustration of potential costs and benefits) creates an inaccurate impression of the relative magnitude of costs and benefits of the Proposal. The proportions chosen in drawing the chart are fundamentally different to those borne out by the data within the IA. To illustrate the impact, the Figure creates the impression that the range of potential benefits of UNC006 are approximately the same as all of the other information disclosure arrangements currently in place in the gas industry added together, which is clearly not the case. As this diagram is one of the few illustrations in the document, it is very likely to be used to provide an impression of scale. In the interests of reducing the possibility of misunderstanding it would be most helpful if Ofgem were to reproduce the Figure in a more representative manner in its final conclusions. In reality, the benefits of the Proposal are significantly less than would appear from Figure 5.2.

Overall in the IA, net benefits over those provided by Phase III information are indicated as £6.3 million. These compare with a value of gas flowing through the NTS of about £10 billion p.a. We therefore conclude that overall, the benefits for introducing proposal UNC 006 appear to be hugely outweighed by the potential risks.

We trust that the above comments will be of assistance in compiling your final views. In order to avoid duplication, we have refrained from repeating comments made on a number of points made in UKOOA's response to this consultation.

Notwithstanding our belief that this Proposal should not be implemented, BP remains fully committed to working constructively with DTI, Ofgem and Transco to ensure that appropriate information disclosure arrangements are in place to facilitate the efficient operation of the UK gas market

Our response is not confidential and may therefore be placed in your library and on your website. Please do not hesitate to contact the undersigned should you wish to discuss the contents of this letter further

Yours sincerely

David Slack  
Manager UK Regulatory Affairs

Cc Claire Durkin, DTI