

19 September 2005

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

Dear Sonia

**Information Release under Gas Transporters' Licence
Standard Special Condition A7 – Guidance Document**

UKOOA is pleased to respond to Ofgem's Guidance Document regarding the release of information under Gas Transporters' Licence Standard Special Condition A7 which was issued at the end of June 2005. Clearly, this is a subject of considerable interest to UKOOA and its members, given all that has happened with respect to the release of information to the market during the past two years and, in particular, the arrangements put in place following the agreement reached in March 2004 as a result of the talks chaired by DTI, to which Ofgem was a party. Since 1st July 2005, the full range of information in all three phases has been made available, the last item being flows of gas into the NTS, as close to real-time as feasible, aggregated into north and south zones.

We have a few points to make in our response.

1. UKOOA and its members fully understand the importance which is attached to the continued provision of TBE data to Transco for its long term planning (ref. phase II of DTI's scheme). Throughout the talks in late 2003 and early 2004, it was agreed by all parties that this information was both sensitive and confidential and so should be protected from disclosure. While recognising the efforts which Ofgem has made in the preparation of its guidance, we note that it is "not legally binding", as the Authority cannot fetter its discretion, but that it does highlight issues that the Authority "may wish to have particular regard to" when considering proposals for the disclosure of information. These words go to the very heart of the issue; UKOOA and its members need complete assurance that some information, such as TBE data, will not be disclosed. In our opinion, it would be unreasonable for a company to rely on non-binding guidance and the unfettered discretion of the Authority to prevent its release under a modification proposal to the network code.

The decision taken by the Authority in June caused Transco to have to invoke the return-or-destroy clause in the confidentiality agreements under which TBE data for 2004 and 2005 had been provided to Transco. This was in accordance with the terms of those confidentiality agreements and, therefore, entirely logical. As a result, Transco and we are now working together to make the necessary arrangements so that TBE data can be provided in 2006 and thereafter. We firmly believe that this is the correct way in which to ensure the continued supply of such confidential and commercially sensitive information.

2. We also note that, in paragraph 3.15, it is rightly stated that “In publishing, the Authority is required to have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons where publication of that matter would or might, in the Authority’s opinion, seriously and prejudicially affect their interests.” In 3.18, it is also stated that “It [the Authority] will also consider the extent to which the disclosure ... would or might, in its opinion,, seriously and prejudicially affect the relevant parties’ interests, either because the information is commercially sensitive and/or the information is confidential.” Again, this is all subject to the Authority’s discretion.

3. Ofgem clearly considers that the onus is on the information providing party to demonstrate either the confidential or the commercially sensitive nature of the information in question. While information providing parties will no doubt state any such concerns which they may have, it does seem to UKOOA that there is a thread woven through the guidance that all information should automatically be public unless proven to be private. In our opinion, this reinforces the need to treat information such as TBE data as we have described in 1 above.

4. It was interesting to note in our meeting on 13th September that Alistair Buchanan stated that modification proposal UNC 006 had effectively been approved by the Authority, but that you remained willing to see if DTI’s voluntary scheme was working and that, generally, you wanted to see voluntary agreements work. We were naturally pleased to hear this.

It is instructive to assess the information in UNC 006 against Ofgem’s new tests of commercial sensitivity provided on pages 20 and 21 of the guidance. In all three tests, the information sought under UNC 006 is either at or well towards the red, most commercially sensitive end of the colour coded bars and therefore, presumably, “disclosure would or might seriously and prejudicially affect the relevant parties’ interests”. However, given Alistair’s statement above, it suggests that the Authority would appear to have decided otherwise, in principle, at its July meeting.

Reviewing phase III of DTI’s scheme against these tests, the relevant items of information are numbers 1 and 4 and, in overall terms and as expected, these

are further to the right on the coloured bars and so less sensitive. We would like to point out that these simple tests reveal why our members are content to see items 1 and 4 of DTI's scheme published, but are not of the same mind about publication of UNC 006 information.

5. Surprisingly little is written in the guidance about the significant matter of liability. Once more, Ofgem expects information providers to demonstrate their concerns (ref. 3.21). However, even if they do so, there is nothing in the guidance to indicate how any liabilities will be managed in the event of a claim from an aggrieved party who has used published information and suffered a loss. This would be particularly relevant for information which had not been aggregated and which was, therefore, traceable to its source and even more especially so if the provider had deemed the information to be confidential and/or commercially sensitive, but this was over-ruled by Ofgem or the Authority in reaching its decision. UKOOA believes that this matter needs much more attention in the guidance than it has received.

We naturally remain available to discuss these points in greater detail, should you so wish. We are very keen to see that the confidence which has developed as a result of the successful provision of TBE data in 2004 and 2005 is built upon by all parties to these arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Tholen', is positioned above a thin red horizontal line.

Mike Tholen
Economics and Commercial Director

c.c Rob Lally - DTI