

NOTICE UNDER SECTION 23 OF THE GAS ACT 1986

The Gas and Electricity Markets Authority (the “Authority”) hereby gives notice pursuant to section 23 of the Gas Act 1986 (“the Act”) as follows:

1. The Authority proposes to modify the gas transporter licence granted on 3 July 2007 under section 7 of the Act to Fulcrum Pipelines Limited (Company Number 6006362) (the “Licensee”) by:
 - a. adding Special Condition 1 (Charging of Gas Shippers – Relative Price Control) (SC1) as set out in Appendix 1 to this notice; and
 - b. altering standard condition 4A (Obligations as Regards Charging Methodology) (SLC 4A) as detailed in Appendix 2 to this notice.
2. The effect of these modifications is to ensure that the transportation charges made by the Licensee to shippers are broadly equivalent to the transportation charges administered by the incumbent Gas Distribution Network (DN) operator to whose pipe-line system the Licensee’s pipe-line system is connected.
3. The reason for introducing SC1 is to protect the interests of consumers connected to the Licensee’s pipeline system against excessive transportation charges by capping the Licensee’s transportation charges at a level broadly consistent with the incumbent DN operator’s charges through a relative price control (RPC), which also provides a transparent, consistent and readily verifiable charging arrangement that promotes competition in the supply of gas; and this reason is fully set out in various documents including, *“The Regulation of Independent Gas Transporter Charging – Final Proposals, 64/03, July 2003”*, which is available free of charge from the Ofgem website (www.ofgem.gov.uk) or the Ofgem library, 9 Millbank, London SW1P 3GE (telephone – 020 7901 7003).
4. The reason for altering SLC 4A is to ensure that Special Condition 1 explicitly determines the transportation charging methodology adopted by the Licensee by excluding revenues derived from charges controlled by SC 1 from the reasonable profit objective set out in SLC 4A(6).

5. Any representation or objection to the proposed modification must be made in writing on or before 4 August 2007 and addressed to Indra Thillainathan, Senior Analyst, Ofgem, 9 Millbank, London, SW1P 3GE or indra.thillainathan@ofgem.gov.uk.

Joanna Whittington

Director – Gas Distribution

Authorised on behalf of the Gas and Electricity Markets Authority

Dated...4 July 2007

Appendix 1

Special Condition 1. Charging of Gas Shippers – Relative Price Control

1. Subject to paragraph 2, where the licensee makes charges in accordance with paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers – General) and where,

- (a) the licensee provides transportation arrangements to a premises;
and
- (b) charges, or revenues derived from them, are, in the main, not controlled or limited in pursuance of any condition of this licence other than standard condition 4 (Charging of Gas Shippers – General)

then paragraph 5 of standard condition 4 (Charging of Gas Shippers – General) shall cease to have effect in relation to such premises.

2. For premises subject to paragraph 1 of this condition the licensee shall for all such premises, unless the Authority consents otherwise in writing, charge no more than:

$$TC_t = TC_{t-1} \times \left(1 + \frac{wSSP_r}{100} \right)$$

- (a) Where $TC_{t-1} \times \left(1 + \frac{wSSP_r}{100} \right)$ is greater than C_t , then

$$TC_t = C_t$$

- (b) Where $TC_{t-1} \times \left(1 + \frac{wSSP_r}{100} \right)$ is less than F_t , then

$$TC_t = F_t$$

- (1) Subject to this condition at Entry-point, then

$$TC_t = SSP - CSEP$$

- (2) The licensee shall adjust charges on 1 January each year in accordance with this condition. Where the Entry-point is in the immediately preceding period of 1 October to 31 December, the licensee is not required to adjust charges in accordance with paragraph 2 above but shall modify the charges in accordance with this condition each 1 January thereafter.
- (3) To determine the level of charges the licensee shall apply Annual Quantity in relation to domestic premises in accordance with standard Annual Quantity as accepted by the Authority, and for other premises as reasonably estimated and agreed between the licensee and any relevant shipper, unless the Authority directs otherwise for those other premises. In this paragraph 2 (3) domestic premises excludes any domestic premises where a surcharge is made pursuant to paragraph 5 of this condition.
- (4) At Entry-point, C_t and F_t shall be calculated as follows:

$$C_t = TC_t \times (1 + 0.05)$$

$$F_t = TC_t \times (1 - 0.05)$$

Where t is greater than 1, C_t and F_t shall be calculated as follows:

$$C_t = C_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

$$F_t = F_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

- (5) Charges made or which fall to be made to premises under paragraph 1 of this condition shall be determined in accordance with this condition for a period of no less than 10 years from Entry-point.

- (6) Where the Authority reviews charges made, or which may be made, under this condition and implements any such review after 2014, the Authority shall, in the course of conducting its review, have regard to previous efficiently incurred capital expenditure made by the licensee in the course of carrying on activities required by or permitted under the Gas Act and relevant licence.

Definitions:

Annual Quantity	means the annual quantity of gas off-taken, or which may be reasonably likely to be off-taken, by a single supply point or connected system exit point;
C_t	means the charge ceiling as determined in accordance with paragraph 2 (4) of this condition;
CSEP	means the incumbent Gas Distribution Network operator's connected system exit point charges calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;
Entry-point	means the date at which $t = 1$ and, with the exception of premises subject to paragraph 3 (4) of this condition, shall be determined as either the date of connection of a premises to the licensee's pipe-line system, and where gas has entered the premises' service pipe, or the date the licensee is contractually bound to provide a connection to the person requiring that connection. The licensee shall select the entry-point date within 60 days of the contract to connect, unless the Authority otherwise directs the date of the Entry-point;
F_t	means the charge floor as determined in accordance with paragraph 2 (4) of this condition;

- RPI means the value published in October of each year by the Authority and calculated as the percentage change (whether of a positive or a negative value) in the arithmetic average of the retail price index determined in respect of April to September (both inclusive) of the current calendar year and the arithmetic average of the retail price index determined with respect to April to September of the previous calendar year;
- SSP means the incumbent Gas Distribution Network operator's single supply point charge for premises calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at the Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;
- TC_t means the maximum charge the licensee may charge for each premises subject to paragraph 2 of this condition in year ' t ';
- TC_{t-1} means the maximum charge the licensee may charge each premises subject to paragraph 2 of this condition in the year preceding year ' t ' or part thereof;
- $wSSP_r$ means the percentage change in the average of the incumbent Gas Distribution Network operator's single supply point charge from year $t-1$ to year t for each Network Region r . Network Regions r comprise: r_1 Scotland, comprising LDZ exit zones SC; r_2 North and Yorkshire, comprising LDZ exit zones NO, NE; r_3 North West, comprising LDZ exit zones NW; r_4 East England, comprising LDZ exit zones EM, EA; r_5 West Midlands, comprising LDZ exit zones WM; r_6 Wales and South West, comprising LDZ exit zones WA, SW; r_7 North London, comprising LDZ exit zones NT; and r_8 South and South East, comprising LDZ exit zones SO, SE. The values for $wSSP_r$ in respect of each region shall be determined and published in October of each year by the Authority; and

Δ_r means the annual percentage change in respect of the Network Region r in which the premises are located, and has a value according to the schedule below:

Region	Annual percentage change
r_1 Scotland	0.42
r_2 North and Yorkshire	1.13
r_3 North West	1.40
r_4 East England	1.64
r_5 West Midlands	1.57
r_6 Wales and South West	0.36
r_7 North London	1.23
r_8 South and South East	1.51

3. Where charges are made in accordance with paragraph 2, they may include a surcharge subject to the following conditions:

- (a) from 1 January 2007 the maximum surcharge is 0.3728 pence per kWh of gas transported, adjusted on 1 January of each subsequent year by a factor of $\left(1 + \frac{RPI}{100}\right)$. RPI has the same meaning as given in paragraph 2 of this condition;
- (b) the surcharge has a maximum duration of 20 years from when the surcharge to the relevant shipper first falls due;
- (c) the surcharge may only apply to existing domestic premises which were in existence for not less than 6 months prior to the provision of the gas main extended specifically for connection of those premises, and which have not previously received a supply of natural gas;
- (d) the licensee has, on request to provide a connection by the owner or occupier of the premises, extended a gas main to specifically connect the premises;

- (e) the licensee must notify the Authority of the specified amount and specified duration as soon as reasonably practicable but in any event no later than 28 days prior to any such charge falling due; and
 - (f) the Authority may direct the licensee not to make the surcharge within 28 days of the notification in (e) above.
- 4. The licensee shall furnish the Authority with a statement of charges determined in respect of paragraph 2 in a form approved by the Authority. The licensee shall
 - (a) publish a statement, or revision or amendment of a statement, furnished, or notice given, under paragraph 2 in such manner as will, in its reasonable opinion, secure adequate publicity for it;
 - (b) send a copy of any such statement, revision, amendment or notice so published to any person who asks for one; and
 - (c) the licensee shall furnish the Authority with specified information in respect of its charges in a specified form as requested from time to time.
- 5. References in paragraphs 2 of special condition 1 (Charging of Gas Shippers - Relative Price Control) to charges do not include references to -
 - (a) charges related to the acquisition or disposal of gas for purposes connected with the balancing of the licensee's pipe-line system;
 - (b) to the extent (if any) to which the Authority has accepted that they should, as respects certain matters, be so determined, to charges determined by reference to provisions in that behalf set out in the Network Code; or
 - (c) charges related to the provision of meters or reading of meters.
- 6. The charging arrangements in paragraph 2 and paragraph 3 shall apply so long as this licence continues in force but shall cease to have effect in such circumstances and at such times as are described in paragraph 7.

7. Pursuant to paragraph 6, the licensee may make a disapplication request in writing to the Authority. The disapplication request shall specify the paragraphs of this condition (or any part or parts thereof) to which the request relates and shall state the date (the “disapplication date”) from which the licensee wishes the Authority to consent that the specified paragraphs (or the specified parts or parts thereof) shall cease to have effect. The disapplication date is a date which is not less than 10 years after 1 January 2004.
8. The disapplication request may be withdrawn by the licensee at any time prior to the disapplication date.
9. The condition (or any part or parts thereof) to which the disapplication request relates shall cease to have effect from the date specified in the disapplication request or such later date as may be agreed, if the Authority agrees in writing to the disapplication request.
10. If the Authority has not made a reference to the Competition Commission under section 24 of the Act relating to the modification of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of 12 months which will end with the disapplication date and the licensee has not withdrawn the disapplication request, the licensee may deliver a termination notice to the Authority. Following the service of a termination notice, with effect from the disapplication date or such later date as may be specified in the termination notice such of the paragraphs (or any part or parts thereof) as are specified in the disapplication request shall cease to have effect in this licence.
11. If the Competition Commission makes a report on a reference in respect of this licence made by the Authority relating to the modifications of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the removal of such paragraphs (or any part or parts thereof) operates or may be expected to operate against the public interest, the licensee may within 30 days

after the publication of the report by the Authority in accordance with section 25 of the Act deliver to the Authority a termination notice. With effect from the disapplication date or such later date as may be specified in the termination notice such paragraphs (or any part or parts thereof) as are specified in the disapplication request and in respect of which the Competition Commission report does not include the aforementioned conclusion shall cease to have effect in this licence.

Definitions:

“Networks Regions” r comprise: Scotland, comprising LDZ exit zones SC; North and Yorkshire, comprising LDZ exit zones NO, NE; North West, comprising LDZ exit zones NW; East England, comprising LDZ exit zones EM, EA; West Midlands, comprising LDZ exit zones WM; Wales and South West, comprising LDZ exit zones WA, SW; North London, comprising LDZ exit zones NT; and South and South East, comprising LDZ exit zones SO, SE. Where LDZ exit zones has the meaning given in the Network Code.

“Gas Distribution Network operator” means any of the licensed Gas Transporters who operate the eight Gas Distribution Networks or any successors to such licensees or networks.

Appendix 2

Condition 4A. Obligations as Regards Charging

Methodology

1. Except in so far as the Authority consents to the licensee not doing so, the licensee shall, subject to paragraphs 2 and 3, from time to time make such modifications of the methodology established in pursuance of paragraph 5 of standard condition 4 (Charging of Gas Shippers – General) (“the charging methodology”) as may be requisite for the purpose of achieving the relevant methodology objectives.
2. Except in so far as the Authority otherwise approves, the licensee shall not make a modification of the charging methodology unless it has -
 - (a) consulted the relevant shippers on the proposed modification and allowed them a period of not less than 28 days within which to make written representations; and
 - (b) furnished the Authority with a report setting out -
 - (i) the terms originally proposed for the modification;
 - (ii) the representations (if any) made by relevant shippers; and
 - (iii) any change in the terms of the modification intended in consequence of such representations,and unless 28 days have elapsed since the said report was furnished without the Authority having given the licensee a direction requiring that the modification be not made.
3. Subject to paragraph 4, the licensee shall in each calendar year furnish the Authority with a report on the application of the charging methodology during the 12 months preceding 1st October in that year including a statement as to -
 - (a) the extent to which, in the licensee’s opinion, the relevant methodology objectives have been achieved during the period to which it relates;

- (b) whether those objectives could more closely be achieved by modification of the charging methodology; and
 - (c) if so, the modifications which should be made for that purpose.
- 4. As respects the calendar year in which this licence came into force:
 - (a) if it came into force on or after 1st October in that year, paragraph 3 shall not apply; or
 - (b) if it came into force before that date, paragraph 3 shall have effect as if for the reference to the 12 months preceding that date there were substituted a reference to the period preceding that date beginning with the date on which the licence came into force.
- 5. In paragraphs 1 and 3 “the relevant methodology objectives” means, subject to paragraph 6, the following objectives -
 - (a) that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business;
 - (b) that, so far as is consistent with sub-paragraph (a), the charging methodology properly takes account of developments in the transportation business; and
 - (c) that, so far as is so consistent, compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers.
- 6. Where -
 - (a) the charging methodology results in charges which, or the revenue derived from which, are, in the main, not controlled or limited in pursuance of any standard condition of this licence other than standard condition 4 (Charging of Gas Shippers – General) ; and
 - (b) the Authority has not accepted that, for a specified period, this paragraph should not apply or has so accepted subject to standard conditions which are not satisfied,

“the relevant methodology objectives” shall include the following objective, namely, that the charging methodology results in charges which,

taking one charge with another and one year with another, permit the licensee to make a reasonable profit, and no more, from its transportation business so, however, that, for the purposes of this paragraph, there shall be disregarded -

- (i) costs incurred for the purposes of that business in connection with the construction of pipe-lines for the benefit of an area for the time being designated for the purposes of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges);
- (ii) revenue derived from that business by way of charges (within the meaning of standard condition 4B (Connection Charges etc)) to which any provisions of that standard condition have effect and which are in respect of premises within an area for the time being so designated;
- (iii) revenue derived from that business by way of supplemental charges (within the meaning of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges));
- (iv) revenue derived from that business by way of charges established under paragraph 2 of special condition 1 (Charging of Gas Shippers – Relative Price Control); and
- (v) any payments made by the licensee in connection with the proposed development of an area for the time being not so designated to a person who has an interest in land in that area, other than by way of reasonable consideration for an interest in land or for goods or services with which the licensee is provided,

and, for the purposes of this paragraph, “costs” and “revenue” mean costs and revenue determined on an accrual basis.

7. The licensee shall comply with any direction given from time to time by the Authority requiring the licensee -

- (a) subject to paragraphs 8 and 9 to publish such information as may be specified or described in the direction-
 - (i) as to any of the costs incurred by the licensee in its transportation business, or

- (ii) relating to the charging methodology as modified from time to time in accordance with paragraph 1; and
 - (b) to do so in such form and manner and with such frequency as may be so specified.
- 8. The licensee shall not be required by paragraph 7 to publish any information or any document -
 - (a) which it could not be compelled to give in evidence or produce in civil proceedings before the court; or
 - (b) so far as it comprises information relating to costs incurred in connection with the construction of pipe-lines for the benefit of an area for the time being designated for the purposes of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges) or so incurred in preparation for the area becoming so designated.
- 9. In publishing any information in pursuance of paragraph 7 the licensee shall have regard to the need for excluding, so far as is practicable, any matter which relates to the affairs of any person where the publication of that matter would or might seriously and prejudicially affect his interests.
- 10. Any question arising under paragraph 9, as to whether the publication of some matter which relate to the affairs of a person would or might seriously and prejudicially affect his interests, shall be determined by the Authority.
- 11. In this condition “transportation business” includes activities connected with the storage of gas in pursuance of storage arrangements which relate to the utilisation of -
 - (a) an offshore gas storage installation;
 - (b) storage cavities in natural strata; or
 - (c) containers for the storage of gas in a liquid state.
- 12. If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons as to the extent to which there is competition in relation to the storage of gas in particular categories of the facilities mentioned in paragraph 11(a), (b) or (c) and its view on that

question, considers it appropriate that paragraph 11 should be modified by the omission of sub-paragraph (a), (b) or (c), then the sub-paragraph in question shall be omitted with effect from a date specified in a notice relating thereto published by the Authority for the purposes of this condition generally; and, if all three sub-paragraphs come to be omitted, paragraph 11 and the reference thereto in the definition of “transportation business” in standard condition 1 (Definitions and Interpretation) shall cease to have effect.