

MODIFICATION OF GAS TRANSPORTER LICENCES PURSUANT TO SECTION 23 OF THE GAS ACT 1986, AND

NOTICE PURSUANT TO SECTION 38A OF THE GAS ACT 1986 OF THE REASONS FOR THE DECISION OF THE GAS AND ELECTRICITY MARKETS AUTHORITY TO MODIFY THE GAS TRANSPORTER LICENCES

WHEREAS

In accordance with section 23(3) of the Gas Act 1986 (the "Act"), the Authority gave notice on 21 February 2008 on the Ofgem website (www.ofgem.gov.uk) (the "Notice") that it proposed to modify the gas transporter licences granted or treated as granted by the Gas and Electricity Markets Authority (the "Authority") under section 7 of the Act (the "licences") to all gas transporters by omitting standard condition 17 (Provision of services for persons who are of pensionable age or disabled or chronically sick: arrangements in respect of meters) to standard condition 23 (Record of and report on performance) inclusive, and adding the following new standard conditions –

- a) Condition 17 (Provision of services for specific domestic customer groups);
- b) Condition 18 (Arrangements for access to premises);
- c) Condition 19 (Procedure for dealing with complaints);
- d) Condition 21 (Reporting on Performance); and
- e) Condition 22 (Provision of information during unplanned interruptions),

and the Authority also proposed to alter the following current standard conditions in the licences –

- f) Standard condition 44 (Availability of resources); and
- g) Standard condition 46 (Credit rating of licensee),

and specified that any representations or objections to the proposed modifications to the Conditions must be made on or before 20 March 2008.

2. These modifications are intended to apply only to gas transporters in whose licences the standard conditions in 'Section C. Transportation Services Obligations' of the licence have effect through a Transportation Services Direction issued by the Authority on or after 18 January 2006 ("the Transportation Services Direction").
3. In accordance with section 38A(1)(b) of the Act, the reasons for the decision of the Authority to make the proposed licence modifications are to implement those changes to the regulatory framework which have been

consulted on in conjunction with the Gas Distribution Price Control Review; in particular, those changes clarifying, focusing and rationalising gas transporters' quality of service performance levels for vulnerable customers, and to implement a change updating gas transporters' credit rating requirements.

4. Further details of the reasons are set out in various documents including:
 - a. *'Gas Distribution Price Control Review Initial Proposals Document*, Ofgem, 29 May 2007, ref: 125/07;
 - b. *'GDPCR: Initial Licence Drafting Consultation'*, Ofgem, 10 September 2007, ref: 221/07;
 - c. *'Gas Distribution Price Control Review Updated Proposals Document*, Ofgem, 24 September 2007, ref: 226/07;
 - d. *'Open letter on Ofgem's proposals to implement revised standards of performance arrangements for gas transporters'*, Ofgem, November 2007, ref: 279/07;
 - e. *'Gas Distribution Price Control Review', Final Proposals Decision and Supplementary Appendices Documents*, Ofgem, December 2007, ref: 285 and 285a/07; and
 - f. *'GDPCR: Second Licence Drafting Consultation'*, Ofgem, 11 December 2007, ref: 290/07,all of which are available (free of charge) from the Ofgem library, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website.
5. In accordance with section 23(4) of the Act the Authority sent a copy of the Notice to the Secretary of State, to all gas transporters, the Health and Safety Executive and the Consumer Council and did not receive by 20 March 2008 or at all, a direction from the Secretary of State not to make any modification.
6. By 20 March 2008 the Authority received six representations and received no objections to the proposed modifications.
7. One respondent considered that paragraph 3(a) of Standard Condition 22 (Provision of information during unplanned interruptions) should be amended for greater clarity.
8. The Authority has duly considered all the representations and has made the following revisions in response to the representations it has received:
 - i. Standard Condition 22 – in paragraph 3(a) replace the words "relevant period means the period 1 April 2008 to 31 March 2011 and thereafter each succeeding rolling period of 36 months starting

on 1 April 2009 and 1 April in each subsequent year;" with the words "relevant period means the 36 months starting 1 April 2008 and thereafter each succeeding rolling period of 36 months starting on 1 April in each subsequent year;"

NOW THEREFORE

In accordance with its powers under section 23(1)(b) of the Act the Authority **HEREBY MODIFIES** the gas transporter licences granted or treated as granted under section 7 of the Act which have Section C in effect pursuant to a Transportation Services Direction, in the manner contained in the attached Schedule **WITH EFFECT** on and from 1 April 2008 and **THE CONDITIONS AS MODIFIED SHALL HAVE EFFECT OR CONTINUE IN EFFECT ON AND FROM 1 APRIL 2008.**

This document also constitutes the notice of reasons under section 38A(1)(b) of the Act for the Authority's decision to modify the Licences.

Dated the 31st day of March 2008

The official seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

Steve Smith



Managing Director, Networks
Authorised on behalf of the Gas and Electricity Markets Authority

SCHEDULE

[Proposed licence texts SLCs 17 to 19, 21, 22, 44 and 46]

Condition 17. Provision of services for specific domestic customer groups

Arrangements in respect of meters

1. Where a relevant supplier or a gas supplier who is about to become such a supplier has -
 - (a) pursuant to paragraph 1(d) of standard condition 26 (Services for specific Domestic Customer groups) of its supply licence transmitted to the licensee a request for the repositioning of a meter owned by the licensee; and
 - (b) undertaken to pay the licensee's reasonable expenses in complying with the request,then, so far as it is reasonably practicable and appropriate for it to do so, the licensee must comply with the request.

Services for vulnerable domestic customers

2. If a domestic customer who is of pensionable age, disabled, or chronically sick asks it to do so, the licensee must, free of charge, agree a password with that customer that can be used by any representative of the licensee to enable the customer to identify that person for the purpose of carrying out necessary work for which the password was agreed.
3. The licensee must provide facilities, free of charge to domestic customers, which enables any domestic customer who is:
 - (a) blind or partially sighted; or
 - (b) deaf or hearing-impaired and in possession of appropriate equipment,to ask or complain about any service provided by the licensee.

Provision of information

4. The licensee must prepare a statement, in plain and intelligible language, that sets out and explains its arrangements for complying with its obligations under this condition.
5. In relation to the statement prepared under paragraph 4, the licensee must:
 - (a) publish the statement on and make it readily accessible from its website;
 - (b) at least once each year, take all reasonable steps to inform domestic customers whose premises are connected to the pipe-line system to which this licence relates, of the existence of the statement and how to obtain it;
 - (c) when asked to do so, provide to a domestic customer whose premises are connected to the pipe-line system to which this licence relates and who is blind, partially sighted, deaf, or hearing-impaired, the statement in a manner or a format that is suitable for that customer's special communication needs;
 - (d) when asked to do so, provide to a domestic customer whose premises are connected to the pipe-line system to which this licence relates and whose first language is not English, such assistance or advice as will enable that customer to understand the contents of the statement; and
 - (e) give a copy of the statement on request and free of charge to any person.
6. The statement prepared under paragraph 4 may, at the licensee's choice, be published as a single document that may also include the statements referred to in Standard Condition 18 (Arrangements for access to premises) and Standard Condition 19 (Procedure for dealing with complaints).
7. For the purposes of this condition:

“pensionable age” has the meaning given in section 48(2B) of the Act.

Standard Condition 18. Arrangements for access to premises

1. The licensee must take all reasonable steps to ensure that each representative of the licensee who visits a customer's premises on its behalf:
 - (a) possesses the skills necessary to perform the required function;
 - (b) can be readily identified as a representative of the licensee by a member of the public;
 - (c) uses any password that the licensee has agreed with the customer in accordance with paragraph 2 of Standard Condition 17 (Provision of services for specific domestic customer groups);
 - (d) is a fit and proper person to visit and enter the customer's premises; and
 - (e) is able to inform the customer, on request, of the gas emergency helpline number.
2. The licensee must take all reasonable steps, where a representative exercises the powers of entry conferred by Schedule 2B (the Gas Code) to the Act, to avoid undue disturbance to owners or occupiers of premises as a result of visits being made to their premises by its representatives and the representatives of other licence holders exercising powers of entry for like purposes.
3. The licensee must prepare a statement that sets out, in plain and intelligible language, its arrangements for complying with its obligations under paragraph 1.
4. In relation to the statement prepared under paragraph 3 the licensee must:
 - (a) publish that statement on and make it readily accessible from its website ;
 - (b) at least once each year, take all reasonable steps to inform customers whose premises are connected to the pipe-line system to which this licence relates of the existence of the statement and how to obtain it;
 - (c) when asked to do so, provide to a customer whose premises are connected to the pipe-line system to which this licence relates and, who is blind, partially sighted,

deaf, or hearing-impaired, the statement in a manner or a format that is suitable for that customer's special communication needs;

(d) when asked to do so, provide to a customer, whose premises are connected to the pipe-line system to which this licence relates and whose first language is not English, such assistance or advice as will enable that person to understand the contents of the statement; and

(e) give a copy of the statement on request and free of charge to any person.

5. The statement prepared under paragraph 3 may, at the licensee's choice, be prepared and published as a single document that may also include the statements referred to in Standard Condition 17 (Provision of services for specific domestic customer groups) and Standard Condition 19 (Procedure for dealing with complaints).

6. In paragraph 2, the reference to visiting premises includes a reference to entry under the authority of a warrant obtained under the Rights of Entry (Gas and Electricity Boards) Act 1954.

Standard Condition 19. Procedure for dealing with complaints

1. The licensee must produce, maintain and comply with a procedure for dealing with any complaint made by a domestic customer about any of its activities relating to the conveyance of gas or about the manner in which the licensee conducts its transportation business.
2. The licensee must prepare a statement, in plain and intelligible language, that sets out and explains the procedure that is required under paragraph 1.
3. In relation to the statement prepared under paragraph 2 the licensee must:
 - (a) publish on and make it readily accessible from its website;
 - (b) at least once each year, take all reasonable steps to inform domestic customers whose premises are connected to the pipe-line system to which this licence relates of the statement and how to obtain a copy of it;
 - (c) when asked to do so, provide to a domestic customer whose premises are connected to the pipe-line system to which this licence relates and who is blind, partially sighted, deaf, or hearing-impaired, the statement in a manner or a format that is suitable for that customer's special communication needs;
 - (d) when asked to do so, provide to a domestic customer whose premises are connected to the pipe-line system to which this licence relates and whose first language is not English, such assistance or advice as will enable that person to understand the contents of the statement; and
 - (e) give a copy of that statement on request and free of charge to any person.
4. The statement prepared under paragraph 2 may, at the licensee's choice, be prepared and published in the form of a single document that may also include the statements referred

to in Standard Condition 17 (Provision of services for specific domestic customer groups) and Standard Condition 18 (Arrangements for access to premises).

Standard Condition 21. Reporting on Performance

1. The licensee must provide the Authority and the Consumer Council with information specified by the Authority relating to matters that it reasonably considers are relevant to the licensee's customers in relation to Standard Condition 17 (Provision of services for specific domestic customer groups), Standard Condition 18 (Arrangements for access to premises) and Standard Condition 19 (Procedure for dealing with complaints).
2. The information provided by the licensee under paragraph 1 must be in the form of a statistical record having such content and being presented in such a format and at such intervals of time as the Authority may from time to time direct.
3. Prior to issuing a direction under paragraph 2 the Authority must:
 - (a) consult with the licensee and the Consumer Council; and
 - (b) consider any representations received as part of the consultation, including any about the materiality of costs that are likely to be incurred by the licensee in obtaining the information to be specified in the direction.

Standard Condition 22. Provision of information during unplanned interruptions

1. This condition applies where the supply of gas which has been conveyed through pipes to customer's premises connected to the licensee's pipe-line system is interrupted as a result of an emergency or other unplanned event and the licensee reasonably expects that the interruption will continue for more than 24 hours.

2. For each relevant period, the licensee shall:
 - (a) in aggregate in respect of events where the premises of 250 customers or less are affected, inform 97 per cent of customers (verbally or by means of appropriate written notification delivered to the customer's premises), within 12 hours of the time at which the licensee is made aware that an interruption has or reasonably could be expected to have occurred, of the intended programme for (including the expected date of) restoration of supply and the means by which the licensee intends to comply with sub-paragraph (c) of this condition;

 - (b) in at least 97 per cent of events where the premises of more than 250 customers are affected, within 12 hours of the time at which the licensee is made aware that an interruption has or could reasonably be expected to have occurred, make public announcements (including by means of local public address systems and radio broadcasts) in the area affected specifying the intended date for supply restoration, describing the intended supply restoration programme and the means by which the licensee intends to comply with sub-paragraph (c) of this condition; and

(c) in at least 97 per cent of cases, upon the expiry of each succeeding period of 24 hours from the notification under subparagraph (a) or announcement under (b) of this paragraph 2, provide, (including, where appropriate, but not limited to, by means of the telephone enquiry service provided under standard condition 6 (Emergency Services and Enquiry Service Obligations) of this licence) a progress report and revised information on the intended date of supply restoration unless the customer or customers have already been made aware of the current progress and current expected date of restoration by such means.

3. For the purpose of this condition:

- (a) relevant period means the 36 months starting 1 April 2008 and thereafter each succeeding rolling period of 36 months starting on 1 April in each subsequent year;
- (b) where more than one person is a customer in respect of particular premises, a notice given by the licensee to any person who is a customer in respect of those premises shall be sufficient notice to any other person who is a customer in respect of those premises at the time the notice is given;
- (c) where a person is a customer in respect of more than one premises, a reference in this condition to customer is a reference to that person in respect of each of the premises of which that person is a customer to which the condition applies; and
- (d) any reference to a customer shall include any person having apparent authority to represent the customer.

Condition 23

Not used

Condition 44. Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:
 - (a) to properly and efficiently carry on the transportation business of the licensee; and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.

2. The licensee shall by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
 - (a) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate.”
 - (b) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared

or paid by the licensee, the directors of the licensee have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence.”

- (c) “In the opinion of the directors of the licensee, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence held in accordance with its obligations under the Act and such licence for a period of 12 months from the date of this certificate.”

3. The licensee shall submit to the Authority with that certificate:
 - (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate, together with a confirmation of the availability of financial facilities; and
 - (b) a cashflow forecast, movement in net debt and analysis of net debt.
4. The statement submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.
5. The licensee shall inform the Authority in writing immediately if the directors of the licensee become aware of any circumstance which

causes them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 2.

6. The licensee shall require that each certificate provided for in paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statements submitted with it and, on the other hand, any information which they obtained during their audit work on the most recent audited accounting statements of the licensee.
7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee unless prior to the declaration, recommendation or making of the distribution redemption or repurchase (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:
 - (a) The certificate shall be in the following form:

“After making enquiries, the directors of the licensee are satisfied:

 - (i) that the licensee is in compliance in all material respects with all obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of Licensee) and Standard Condition 47 (Indebtedness) of its licence; and
 - (ii) that the making of a distribution redemption or repurchase of [] on [] will not, either alone or when

taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future”.

- (b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.
 - (c) Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.
8. Any reference in this condition to the provisions of the Companies Act 2006 shall before 6 April 2008 be construed as a reference to the corresponding provisions of the Companies Act 1985 or the Companies Act 1989 where applicable in force on 31 March 2008.

Condition 46. Credit Rating of Licensee

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.
2. In this condition:
“issuer credit rating” means
 - (a) an issuer rating by Standard & Poor’s Ratings Group or any of its subsidiaries;
 - (b) an issuer rating by Moody’s Investors Service Inc. or any of its subsidiaries;
 - (c) an issuer default rating by Fitch Ratings Ltd or any of its subsidiaries; or
 - (d) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b) or (c) and issued by:
 - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b) or (c) or;
 - (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.
3. In relation to any issuer credit rating, **“investment grade”** means:
 - (a) unless sub-paragraph (b) below applies:
 - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries;

- (ii) an issuer rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
 - (iii) an issuer default rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (iv) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in subparagraphs (i), (ii) and (iii) and issued by:
 - (aa) any of the credit rating agencies referred to in subparagraphs (i), (ii) or (iii); or
 - (bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.