

**To: All holders of a gas transportation licence**

**MODIFICATION OF THE STANDARD CONDITIONS OF GAS TRANSPORTATION LICENCES UNDER SECTION 94(1) OF THE ENERGY ACT 2008**

WHEREAS:

- 1 Each of the companies to whom this Modification is addressed holds a licence under section 7 of the Gas Act 1986 (“the 1986 Act”) which, by virtue of section 8 of the 1986 Act, incorporates standard conditions (a “gas transportation licence”).
- 2 Section 92 of the Energy Act 2008 (“the 2008 Act”) transfers certain functions (“the relevant metering functions”) of the Gas and Electricity Markets Authority (“the Authority”) to the Secretary of State. The relevant metering functions are conferred by section 17 of the 1986 Act and by gas meter regulations as defined in section 92(5) of the 2008 Act. They are connected with gas meters, and include the appointment and remuneration of meter examiners.
- 3 Section 94(1) of the 2008 Act empowers the Secretary of State to modify gas transportation licences for the purpose of enabling the Authority to recover and pay into the Consolidated Fund, from the holders of gas transportation licences, amounts in respect of:
  - (a) payments relating to meter examiners made by the Secretary of State by virtue of paragraph section 17(7) or (7A) of the 1986 Act; and
  - (b) other costs incurred by the Secretary of State in performing relevant metering functions.
- 4 Section 94 therefore enables the Secretary of State to modify gas transportation licences so that holders of such licences continue to finance the carrying out of the relevant metering functions through their licence fee payments to the Authority, after those functions have been transferred from the Authority to the Secretary of State.
- 5 Section 94 of the 2008 Act came into force on 26th January 2009. Section 92 of the 2008 Act comes into force on 1 April 2009.
- 6 The National Weights and Measures Laboratory (“NWML”) is an executive agency of the Department for Innovation, Universities and Skills which will carry out the relevant metering functions on behalf of the Secretary of State for Innovation, Universities and Skills.
- 7 On 9 January 2009, NMWL issued a consultation document, in accordance with section 94(4) and (5) of the 2008 Act, proposing the making, under section 94(1) of the 2008 Act and with effect from 1 April 2009, of modifications, as set out in the Annex to this notice, to the standard conditions of gas transportation

licences. The consultation document<sup>1</sup> sets out the background to and reasons for the proposed modifications.

- 8 The consultation closed on 2 March 2009. No objections to the proposed modifications have been raised either with NWML or with the Office of Gas and Electricity Markets, which consulted in the same document on related changes to its Licence Fee Cost Recovery Principles Document.

THEREFORE:

In accordance with section 94 of the 2008 Act, the Secretary of State by this notice modifies the standard conditions of gas transportation licences with effect on and from 1 April 2009 by replacing the current condition 3 with a new condition 3 as shown in the Annex to this notice.

This document constitutes a notice of reasons for the licence modification to which it relates for the purposes of section 38A of the 1986 Act.



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**Peter Mason**

**31 March 2009**

**Chief Executive, NWML**

**Authorised by the Secretary of State for Innovation, Universities and Skills**

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<sup>1</sup> The consultation document, with details of responses and the Government's response to the consultation, is available from NWML's website, <http://www.nwml.gov.uk>.

## ANNEX: GAS TRANSPORTATION LICENCE MODIFICATION

### Condition 3: Payments by Licensee to the Authority

1. The licensee shall, at the times stated, pay to the Authority such amounts as are determined by or under this condition.
2. In respect of each relevant year at the beginning of which the licensee holds this licence, the licensee shall pay to the Authority the aggregate of:
  - (a) an amount which is the relevant proportion of the estimated costs of the Authority during the year in question;
  - (b) an amount which is the relevant proportion of the estimated costs of the National Consumer Council during the year in question (including expenses which relate to its establishment but not expenses within paragraph (d)) that the Secretary of State considers is reasonable having regard to the functions exercisable by the National Consumer Council in relation to gas and electricity consumers;
  - (c) an amount which is the relevant proportion of the estimated costs of the Secretary of State which relate to the establishment of the National Consumer Council during the year in question that the Secretary of State considers is reasonable having regard to the functions exercisable by the National Consumer Council in relation to gas and electricity consumers;
  - (d) an amount which is the relevant proportion of any estimated costs of the National Consumer Council, the Secretary of State or the Gas and Electricity Consumer Council during the year in question which relate to a transfer scheme made in respect of the Gas and Electricity Consumer Council under section 35(2)(a) or (7) of the Consumers, Estate Agents and Redress Act 2007;
  - (e) an amount which is the relevant proportion of the estimated costs of the Secretary of State which relate to the abolition of the Gas and Electricity Consumer Council during the year in question;
  - (f) an amount which is the relevant proportion of the estimated costs of the Office of Fair Trading which relate to the expansion of Consumer Direct to enable it to cater for gas and electricity consumers;
  - (g) an amount which is the relevant proportion of the estimated costs of the Office of Fair Trading on, or in connection with, the support of Consumer Direct that the Secretary of State considers is reasonable having regard to the functions exercisable by the National Consumer Council in relation to gas and electricity consumers;

- (h) an amount that is the relevant proportion of the estimated costs of the Secretary of State during the year in question in respect of –
  - (i) payments made by the Secretary of State by virtue of section 17(7) or (7A) of the Act (payments relating to meter examiners);
  - (ii) any other costs incurred by the Secretary of State in performing functions conferred by section 17 of the Act or by gas meter regulations (as defined in section 92(5) of the Energy Act 2008);
- (i) an amount which is the relevant proportion of the estimated costs incurred in the previous relevant year by the Competition Commission in connection with any reference made to it with respect to this licence or any other licence granted under the Act or the Electricity Act 1989; and
- (j) an amount which is the relevant proportion of the difference (being a positive or negative amount), if any, between:
  - (aa) any costs estimated by the Authority in the previous relevant year under sub-paragraphs 2(a) to 2(i); and
  - (bb) the actual costs of the Authority, the National Consumer Council, the Secretary of State and the Competition Commission (in connection with references of the type referred to in sub-paragraph 2(i)) for the previous relevant year or, in the case of the Competition Commission, for the relevant year prior to the previous relevant year.

3. The amounts determined in accordance with paragraph 2 shall be paid by the licensee to the Authority in two instalments, with:

- (a) the first instalment being due for payment by 30 June in each relevant year; and
- (b) the second instalment being due for payment by 31 January in each relevant year

provided that, in each case, if the Authority has not given notice of the amount of the instalment due at least 30 days before the payment date stated above, the licensee shall pay the amount due within 30 days from the actual giving of notice by the Authority to the licensee (whenever notice is given).

4. If the licensee fails to pay the amount determined in accordance with paragraph 2 within 30 days of the payment date determined in accordance with paragraph 3, it shall with effect from that date pay simple interest on that

amount at the rate which is from time to time equivalent to the base rate of NatWest Bank plc or, if there is no such base rate, such base rate as the Authority may designate for the purposes hereof.

5. In this condition:

“estimated costs” means costs estimated by the Authority as likely to be or have been:

- (a) the costs of -
  - (i) the Authority calculated in accordance with the principles determined by the authority for the purposes of this condition generally (after consultation with the licensee and others likely to be affected by the application of such principles) and notified to the licensee;
  - (ii) the National Consumer Council; and
  - (iii) the Secretary of State; and
- (b) the costs incurred by the Competition Commission in connection with references to it in respect of this licence or any other licence granted under the Act or the Electricity Act 1989, such estimate having regard to any views of the Competition Commission;

“relevant proportion” means the proportion of the costs attributable to the licensee in accordance with the principles determined by the Authority for the purposes of this condition generally (after consultation with the licensee and others likely to be affected by the application of those principles) and notified to the licensee or, in relation to the costs of the Competition Commission, in accordance with any direction given by the Competition Commission under section 177(3) of the Energy Act 2004 or, in the absence of such direction, in accordance with such principles; and

“relevant year” means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.