



Industry participants, consumers groups and others interested parties.

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Date: 16 June 2009

Dear Colleague

Review of Industry Code Governance – Environment and Code Objectives

As part of the Review of Industry Code Governance¹, we have considered whether industry parties should have wider responsibilities to assess environmental impacts of modification proposals. In particular, we have explored means of better aligning the industry's assessment of and recommendations on code modification proposals with the Authority's decision making framework².

Background

In June 2008 last year, we published our Guidance³ on the treatment of Greenhouse Gas (GHG) Emissions under the current industry code objectives. The Guidance set out our view that industry should assess and take into account the impacts on GHG emissions which a code modification proposal would have or be likely to have, if implemented, on the efficient and economic operation of the relevant system.

However, following publication of the Guidance a number of industry participants indicated that Ofgem should consider formally amending the existing framework to provide greater clarity to code panels and industry participants on the consideration of environmental issues. In November 2008 we therefore consulted on two key issues in relation to code objectives and the environment; these were:

1. whether Ofgem should introduce express requirements on code panels and industry parties to consider **GHG emissions**; and
2. whether Ofgem should introduce express requirements on code panels and industry parties to consider **broader environmental issues**, in addition to GHG impacts.

GHG emissions

As stated above, although we consider industry should assess and take into account the impact a code modification proposal may have on GHG emissions, questions have been raised by industry participants as to whether the existing legal framework not only enables

¹ For details see: <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx>

² The Authority's statutory duties are wider than matters which the Panel must take into consideration. They are detailed mainly in the Gas Act 1986 and Electricity Act 1989 and have been recently amended, promoting the Authority's duty to have regard to the need to contribute to the achievement of sustainable development.

³ <http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/Open%20letter%20response-%20final%20version%20of%20letter%2030%20June.pdf>

but *requires* such an assessment to be made in cases where a modification has impacts on the relevant objective governing economic and efficient operation of the relevant network.

Questions were also raised by industry participants as to whether an assessment of GHG impacts should be limited to the direct impacts of, or on, a particular licensee, the industry as a whole or society at large.

The November consultation stated our view that if a modification proposal is raised then, where relevant, the quantifiable impacts of the proposal on GHG emissions should be considered in the assessment process. We did not consider that the environmental impacts must relate directly and solely to the licensee for them to be relevant and therefore assessed. The assessment under the efficient and economic operation objective must therefore seek to measure *any* impact on GHG emissions of the implementation of the code modification.

The November consultation therefore sought views on:

1. Our position that the existing legal framework requires industry and code panels to assess and take account of the impacts of modification proposals on GHG emissions;
2. Our position that the scope of the assessment required by the existing legal framework is not limited to the impact on a particular licensee or industry; and
3. Whether there is merit in amending the relevant licence conditions to expressly provide for industry and code panels to have regard to the economic impacts of GHG emissions in considering modification proposals.

Respondents' views

The majority of respondents agreed that the existing framework certainly *enabled* panels and industry working groups etc to assess GHG emissions, though it was not clear if this extended to an acceptance that there is a *requirement* to do so. Some respondents, including the CUSC Panel, specifically commented that there was no obligation to undertake assessments of GHG emissions. There was a significant minority, which included some of the industry code panels, who considered that the position was not sufficiently clear, irrespective of the Guidance.

In relation to the scope of the assessment, the majority of respondents agreed with our position that the scope of assessment was not limited. Some of these noted that it was important when undertaking any assessment to avoid double counting of environmental (GHG) impacts which may have been captured under the Renewable Obligation Certificates or Climate Change Levy for example.

The majority of respondents believed that it was not necessary to amend the existing licence conditions on the basis that the existing framework was suitable to allow industry and code panels to consider GHG impacts. However, a number of respondents, including the BSC Panel, believed that the framework could be made clearer, for instance through a licence modification.

Ofgem's view

Whilst we have been encouraged by the work of the industry and panels in taking account of our Guidance⁴, taking into account responses to our November 2008 consultation we note that there is still no clear or firm industry acceptance that panels and industry are *required* to assess and take account of GHG emissions.

⁴ We note in particular the work of the CUSC Environmental Standing Group, whose final report can be found at: <http://www.nationalgrid.com/NR/rdonlyres/5B0AC24F-4944-47A2-9817-B7EA36542F62/30556/FinalEnvironmentalGroupReport11approvedbythePanel.pdf>

Given this uncertainty, particularly from key industry stakeholders, and in view of the benefits of industry analysis being aligned as much as possible to any Ofgem analysis on the GHG impact of a modification proposal, we agree with those respondents who suggest that there would be benefits in clarifying the licensing framework to make the requirement explicit, clear and unambiguous.

Although the majority of respondents accepted our view that the scope of assessment is not restricted to the impacts of or upon the relevant network licensee, the fact that this interpretation was not universal suggests that it would also be beneficial to clarify this position within the licence.

We therefore propose to consult on a series of potential licence amendments which make clear the requirements on industry and code panels to consider GHG impacts where relevant. These licence amendments are discussed further below.

Broader Environmental Issues

We have previously indicated that there are some limited circumstances in which industry participants might, as part of the prevailing modification assessment process, be required to assess and take account of broader impacts on the environment, such as impacts upon, amongst other things, flora and fauna, visual amenity and the natural landscape. For example, Schedule 9 to the Electricity Act 1989 contains certain duties relating to the environment which are applicable to National Grid Electricity Transmission (NGET). These duties are picked up in the relevant objectives of the Connection and Use of System Code (CUSC), though the requirements to assess these broader impacts do not extend beyond the CUSC. Therefore, in general, industry does not assess or take account of broader environmental impacts when developing and assessing code modification proposals.

Our November consultation listed some of the potential advantages and disadvantages in amending the assessment framework to require code panels and industry to take account of broader environmental impacts. These included:

Advantages

- *better alignment of Authority and industry considerations,*
- *improved accessibility, inclusivity and transparency*

Disadvantages

- *probable lack of industry expertise to take account of such issues,*
- *that it may not be proportionate to require industry to take account of public policy issues such as visual amenity, the landscape and flora and fauna, particularly where there exists a planning framework which should help to ensure that these issues are assessed and consulted on.*

We invited views on this issue including in relation to:

- whether industry agreed with our interpretation on what constituted broader environmental impacts;
- whether there were other such considerations which industry and panels should and/or could take account of; and
- more generally, whether industry and code panels should take account of broader environmental impacts when considering code modification proposals and, if so, how they should/could do so.

Responses

Few respondents commented on what constitutes broader environmental impacts. Of those that did, most agreed with our interpretation and did not have any additional considerations to add. One respondent suggested adding long distance pollution effects, waste, water quality, flood prevention and land use. Another suggested adding impacts on landscape and tranquillity.

The majority of respondents considered that it would be inappropriate for panels and industry parties to be required to take account of broader environmental impacts, on the basis that it would create additional costs and lengthen the assessment process. It was also suggested that the panels and many industry parties may not have the relevant expertise to undertake such assessments. It was also felt that there were adequate legal arrangements under planning laws and Environment Agency procedures for these impacts to be appropriately assessed. However, one respondent suggested that it would be straightforward for views on the wider impacts to be invited during the consultation phase of the modification process.

Some respondents did consider these broader environmental impacts should be assessed; primarily on the basis that it is anomalous that the Authority needs to be mindful of such impacts while industry parties and panels do not.

Ofgem's views

We agree with the majority of respondents that it would not be appropriate to extend the requirements on code panels and industry participants to take account of broader environmental impacts in considering a code modification proposal. In particular, we do not believe that the introduction of such a requirement would be proportionate for the reasons set out below.

First, it is important to note that industry participants such as NGET may on occasion be required to conduct assessments relating to broader environmental impacts, for example, under Schedule 9 of the Electricity Act 1989.

We also consider that on the rare occasions where such analysis may become relevant, it is probable that the modification would trigger existing processes under planning and environmental legislation which are already well established to take into account such assessments.

Further, the broader environmental impacts that we have identified are more likely to be measured using judgements including considerations of public policy and public interest. In this respect, we share the concerns of those respondents who questioned whether panel members and work group participants would ordinarily have the necessary expertise to make such judgements or whether it would be proportionate to require them to obtain (through consultants) or develop (through training) such expertise. The issue of proportionality is relevant here as we would expect there to be very few occasions where such analysis may become relevant.

In summary, therefore, whilst there may be some benefits associated with aligning the industry's and code panel's assessment framework on broader environmental issues with our own, we do not believe that it would be proportionate to introduce express licence requirements on code panels and industry participants to consider broader environmental impacts.

Proposed licence changes

In view of the above, we have attached to this open letter our proposals for **licence modifications** to each of the relevant licence conditions pertaining to the BSC, CUSC and UNC. To the extent that, following consultation, we elect to proceed with these licence

modifications, we would also intend to progress similar licence modifications to the other industry codes that are the subject of our Guidance on the treatment of GHG emissions.⁵ This is not a statutory consultation at this time; we would therefore welcome comments on the substance as well as whether the drafting reflects the intent of the proposals.

The licence modifications are intended to clarify the position that panels and industry, ***where relevant* are *required* to take into account the impact a code modification may have on the level of GHG emissions in the environment**, when assessing such modification against the relevant code objective governing efficient and economic network operation. Further, the licence modifications are intended to clarify that the impact of such a code modification must **not** be limited to that on a particular licensee or industry but must seek to measure **any impact** on GHG emissions of the implementation of the code modification.

We have stressed in the above paragraph the words ***where relevant*** because it is our intention that the suggested licence amendment would only ***require*** panels and industry to undertake a GHG assessment in those circumstances where it is apparent from the nature of the proposal that there would be such impacts.

In practical terms the draft licence modifications require the modification procedures in the relevant codes to be amended so that an assessment of the proposal against the relevant code objectives includes, *where applicable*, an assessment of the financial impact of GHG emissions on society and that this assessment is reflected in the final modification or amendment report that is submitted to the Authority.

We welcome views on our proposals and the accompanying legal text. These submissions should be sent to industrycodes@ofgem.gov.uk by 29 July 2009. We will consider the responses received in order to determine whether to progress formal licence change consultations under the relevant licences.

Yours sincerely

Mark Feather
Director, Industry Codes and Licensing

⁵ These codes are the Distribution Connection and Use of System Agreement, the System Operator Transmission Owner Code, the Grid Code, the Uniform Network Code for Independent Gas Transporters and the Distribution Code.

Attachment – Draft legal text

NGET Transmission Licence Condition C3: Balancing and Settlement Code (BSC)

1. The licensee shall at all times have in force a BSC, being a document
 - (a) setting out the terms of the balancing and settlement arrangements described in paragraph 2;
 - (b) designed so that the balancing and settlement arrangements facilitate achievement of the objectives set out in paragraph 3; and
 - (c) including the modification procedures required by paragraph 4 and the matters required by paragraph 6,

and the licensee shall be taken to comply with this paragraph by modifying from time to time in accordance with the provisions of paragraphs 4 and 5 and the transition modification provisions, the document known as the BSC which existed and the licensee maintained pursuant to this licence immediately prior to the start of the transition period.

2. The balancing and settlement arrangements are
 - (a) arrangements pursuant to which BSC parties may make, and the licensee may accept, offers or bids to increase or decrease the quantities of electricity to be delivered to or taken off the total system at any time or during any period so as to assist the licensee in co-ordinating and directing the flow of electricity onto and over the GB transmission system and balancing the GB transmission system; and for the settlement of financial obligations (between BSC parties, or between BSC parties and the licensee) arising from the acceptance of such offers or bids; and
 - (b) arrangements:
 - (i) for the determination and allocation to BSC parties of the quantities of electricity delivered to and taken off the total system, and
 - (ii) which set, and provide for the determination and financial settlement of, obligations between BSC parties, or (in relation to the system operator's role in co-ordinating and directing the flow of electricity onto and over the GB transmission system) between BSC parties and the licensee, arising by reference to the quantities referred to in sub-paragraph (i), including the imbalances (after taking account of the arrangements referred to in sub-paragraph (a)) between such quantities and the quantities of electricity contracted for sale and purchase between BSC parties.
3. The objectives referred to in paragraph 1(b) are:
 - (a) the efficient discharge by the licensee of the obligations imposed upon it by this licence,
 - (b) the efficient, economic and co-ordinated operation of the GB transmission system;

- (c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
 - (d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2.
4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide (without prejudice to the transition modification provisions and any procedures for modification of the BSC set out in the programme implementation scheme provided for in special condition J (NETA implementation) of the licensee's transmission licence or in the BSC by reference to the programme implementation scheme):
- (a) for proposals for modification of the BSC to be made by the licensee, BSC parties and such other persons or bodies as the BSC may provide;
 - (b) where such a proposal is made,
 - (i) for bringing the proposal to the attention of BSC parties and such other persons as may have an appropriate interest in it;
 - (ii) for proper consideration of any representations on the proposal;
 - (iii) for properly evaluating whether the proposed modification would better facilitate achieving the applicable BSC objective(s), provided that so far as any such evaluation requires information which is not generally available concerning the licensee or the GB transmission system, such evaluation shall be made on the basis of the licensee's proper assessment (which the licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraphs 3(a) and (b);
 - (iv) for the evaluation required in sub paragraph (iii) of the proposal against the applicable BCS objective(s) to include, where applicable, an assessment of the financial impact of green house gas emissions on society;
 - ~~(iii)~~(v) for development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the applicable BSC objective(s);
 - ~~(iv)~~(vi) for the preparation of a report
 - setting out the proposed modification and any alternative,
 - evaluating the proposed modification and any alternative,
 - assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s),
 - assessing the impact of the modification on the core industry documents and the changes expected to be required to such documents as a consequence of such modification,

- setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and

(vii) ~~(vi)~~ for the submission of the report to the Authority as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs (i) to (vi);

- (c) for the timetable (referred to in sub-paragraph (b)(vi)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted;
 - (d) for empowering the licensee to secure, if so directed by the Authority in circumstances specified in the BSC,
 - (i) that the modification procedures are complied with in respect of any particular modification in accordance with the terms of the direction;
 - (ii) that, where a modification has been made but not implemented in accordance with its terms, all reasonable steps are taken to implement it in accordance with the terms of the direction and
 - (iii) that the licensee can recover its reasonable costs and expenses properly incurred in complying with the direction.
5. (a) If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vii), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification.
- (b) The licensee shall, upon receipt by the licensee of a direction from the Secretary of State to do so, modify the BSC so as to incorporate any changes to the BSC designated by the Secretary of State on or before the 8 September 2004.
- (c) The licensee shall have power (by executing an appropriate instrument) to modify the BSC in accordance with any direction of the Secretary of State pursuant to subparagraph (b) and any direction of the Authority pursuant to subparagraph (a) or paragraph 7 of special condition J (NETA implementation) of the licensee's transmission licence and shall modify it in accordance with every such direction; but it shall not have power to modify the BSC in any other circumstance.

- (d) Only the licensee shall have power to modify the BSC.
6. The BSC shall provide for:
- (a) a copy of the BSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy;
 - (b) the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC, such matters arising under the BSC as may be specified in the BSC;
 - (c) information about the operation of the BSC and the balancing and settlement arrangements
 - (i) to be provided to the Authority and/or
 - (ii) to be published,
- and for the licensee to be empowered to secure compliance with these requirements if so directed by the Authority.
7. The BSC may include:
- (a) arrangements to facilitate or secure compliance with the programme implementation scheme designated pursuant to special condition J (NETA implementation) of the licensee's transmission licence or matters envisaged thereunder, and
 - (b) arrangements for final settlement and reconciliation of liabilities arising under or in connection with the Pooling and Settlement Agreement in respect of settlement periods prior to the effective time.
8. The provisions of paragraphs 6, 7 and 11 shall not limit the matters which may be provided for in the BSC.
9. The Authority may direct the licensee to procure the provision to the Authority of, or the publication of, such information about the operation of the BSC and/or the balancing and settlement arrangements as is referred to in paragraph 6(c) and specified in the direction.
10. The licensee shall comply with:
- (a) the BSC; and
 - (b) any direction to the licensee made pursuant to this condition.
11. (a) The licensee shall be a party to the BSC Framework Agreement.
- (b) The BSC and/or the BSC Framework Agreement shall contain provisions:
- (i) for admitting as an additional party to the BSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the BSC) on which accession to the BSC Framework Agreement is offered;
 - (ii) for the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC any dispute which shall arise as to whether a person seeking to be admitted as a party to the BSC

Framework Agreement has fulfilled any accession conditions; and if the Authority determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the BSC Framework Agreement;

(iii) for persons to be admitted as additional parties to the BSC Framework Agreement by either

- a representative (who need not be a BSC party) appointed thereunder to act on behalf of all parties to it, or
- if there is no such representative or if the representative fails to act, the licensee acting on behalf of all parties to it.

(c) If, following a determination of the Authority as referred to in sub-paragraph (b)(ii), the representative referred to in sub-paragraph (b)(iii) fails to act on behalf of all parties to admit such person, the licensee shall act on behalf of all parties to admit such person if directed to do so by the Authority.

12. The licensee shall take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, changes to those documents, such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC.
13. For the avoidance of doubt, paragraph 12 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 12 which the Authority may have.
14. In this condition in the expression "sale and purchase of electricity", sale excludes sale by way of assumption of an imbalance under the BSC and sale by way of supply to premises, and purchase shall be construed accordingly; and

"applicable BSC objective(s)" means

(a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 4 (to the extent they do not conflict with the objectives set out in paragraph 3); and

(b) in relation to any other proposed modification, the objectives set out in paragraph 3.

transition modification
provisions"

means the provisions of this condition which apply or applied during the transition period and which enable or enabled the Authority (whether with or without the consent of the Secretary of State) to direct the licensee to modify the BSC in certain circumstances.

NGET Transmision Licence Condition C10: Connection and Use of System Code (CUSC)

1. The licensee shall establish arrangements for connection and use of system in respect of matters other than those to which standard conditions C14 (Grid Code) and C5 (Use of system charging methodology) to C9 (Functions of the Authority) relate which are calculated to facilitate the achievement of the following objectives:
 - (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity,and the licensee shall be taken to comply with this paragraph by modifying from time to time in accordance with the provisions of paragraphs 6 and 7 and the transition modification provisions, the document setting out the arrangements for connection and use of system which existed and which the licensee maintained pursuant to this licence immediately prior to the start of the transition period.
2. The licensee shall prepare a connection and use of system code ("CUSC") setting out:
 - (a) the terms of the arrangements made in pursuance of paragraph 1;
 - (a) the procedures established in pursuance of paragraph 6; and
 - (b) such other terms as are or may be appropriate for the purposes of the CUSC.
3. The licensee shall only enter into arrangements for connection and use of system which are in conformity with any relevant provisions of the CUSC.
4. The CUSC shall provide for:
 - (a) the licensee and each CUSC user to be contractually bound insofar as is applicable by the terms of the Grid Code from time to time in force;
 - (b)
 - (i) the licensee and each CUSC user, where appropriate, to enter into an agreement or agreements, supplemental to and in a form prescribed by the CUSC, setting out site specific details in respect of each site at which the CUSC user's electrical lines or electrical plant is connected to the GB transmission system;
 - (ii) each CUSC user, where appropriate, to enter into an agreement or agreements with a transmission licensee (other than the licensee) supplemental to and in a form prescribed by the CUSC setting out site specific details in respect of each site at which the CUSC user's electrical lines or electrical plant is connected to the GB transmission system;
 - (c) there to be referred to the Authority for determination such matters arising under the CUSC as may be specified in the CUSC; and
 - (d) a copy of the CUSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy.

5. The provisions of paragraphs 4 and 10 shall not limit the matters which may be provided for in the CUSC.
6. The licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives, which procedures shall provide (without prejudice to the transition modification provisions and the procedures for modification provided for at paragraph 7 below):
 - (a) for proposals for modification of the CUSC to be made by the licensee, CUSC users and such other persons and bodies as the CUSC may provide;
 - (b) where such a proposal is made:
 - (i) for bringing the proposal to the attention of CUSC parties and such other persons as may properly be considered to have an appropriate interest in it;
 - (ii) for proper consideration of any representations on the proposal;
 - (iii) for properly evaluating whether the proposed modification would better facilitate achieving the applicable CUSC objectives, provided that so far as any such evaluation requires information which is not generally available concerning the licensee or the GB transmission system, such evaluation shall be made on the basis of the licensee's proper assessment (which the licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraph 1(a) and (b);
 - (iv) for the evaluation required in sub paragraph (iii) of the proposal against the applicable CUSC objective(s) to include, where applicable, an assessment of the financial impact of green house gas emissions on society;
 - ~~(iv)~~(v) for development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the applicable CUSC objectives;
 - ~~(v)~~(vi) for the preparation of a report:
 - setting out the proposed modification and any alternative;
 - evaluating the proposed modification and any alternative;
 - assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable CUSC objectives;
 - assessing the impact of the modification on the core industry documents and the changes expected to be required to such documents as a consequence of such modification;
 - setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and

- (vi)(vii) _____ (vi) for the submission of the report to the Authority as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs (i) to (vi); and
- (c) for the timetable (referred to in sub-paragraph (b)(vi)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Authority.
7. (a) If a report has been submitted to the Authority pursuant to procedures described in paragraph 6(b)(vii), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the CUSC and any alternative modifications set out in such report, better facilitate achieving the applicable CUSC objectives the Authority may direct the licensee to make that modification.
- (b) The licensee shall, upon receipt by the licensee of a direction from the Secretary of State to do so, modify the CUSC so as to incorporate any changes to the CUSC designated by the Secretary of State on or before 8 September 2004.
- (c) The licensee shall only modify the CUSC:
- (i) in order to comply with any direction of the Secretary of State pursuant to sub-paragraph (b) or any direction of the Authority pursuant to sub-paragraph (a); or
- (ii) with the consent of the Authority,
- and it shall not have the power to modify the CUSC in any other circumstance; and the licensee shall furnish the Authority with a copy of any modification made.
- (d) Only the licensee shall have the power to modify the CUSC.
8. The licensee shall prepare and publish a summary of the CUSC as modified or changed from time to time in such form and manner as the Authority may from time to time direct.
9. The licensee shall be a party to the CUSC Framework Agreement and shall comply with the CUSC.
10. The CUSC Framework Agreement shall contain provisions:
- (a) for admitting as an additional party to the CUSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the CUSC) on which accession to the CUSC Framework Agreement is offered; and
- (b) for referring for determination by the Authority any dispute which shall arise as to whether a person seeking to be admitted as a party to the CUSC Framework Agreement has fulfilled any accession conditions; and if

the Authority determines that the person seeking accession had fulfilled all relevant standard conditions, for admitting such person to be a party to the CUSC Framework Agreement.

11. The Authority may issue a direction to the licensee to make such amendments to the agreement known as the Master Connection and Use of System Agreement ("MCUSA") and the supplemental agreements and ancillary services agreements (as defined or referred to in MCUSA) and any associated agreements derived from MCUSA as shall be stated as required to be made to amend them appropriately into the CUSC Framework Agreement, CUSC, bilateral agreements, construction agreements and associated agreements derived from CUSC so as to maintain continuity of contractual relationships.
12. The licensee shall take all reasonable steps to secure and implement (consistently with the procedures applicable under or in relation to such documents), and shall not take any steps to prevent or unduly delay, changes to the core industry documents to which it is a party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
13. For the avoidance of doubt, paragraph 11 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 12 which the Authority may have.
14. The licensee shall comply with any direction to the licensee made pursuant to this condition.
15. In this condition:
"applicable CUSC objectives" means:
 - (a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1); and
 - (b) in relation to any other proposed modification, the objectives set out in paragraph 1.

"transition modification provisions"

means the provisions of this condition which apply or applied during the transition period and which enable or enabled the Authority (whether with or without the consent of the Secretary of State) to direct the licensee to modify the CUSC in certain circumstances.

Standard Special Condition A11. Network Code and Uniform Network Code

Transportation Arrangements

1. The licensee shall establish transportation arrangements, pursuant to paragraphs 3 and 6 of this condition, in respect of matters other than those to which Standard Special Conditions A4 (Charging – General) and A5 (Obligations as Regard Charging Methodology) relate, which are calculated, consistent with the licensee's duties under section 9 of the Act, to facilitate the achievement of the following objectives –
 - (a) the efficient and economic operation of the pipe-line system to which this licence relates;
 - (b) so far as is consistent with sub-paragraph (a), the coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;
 - (c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;
 - (d) so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition:
 - (i) between relevant shippers;
 - (ii) between relevant suppliers; and/or
 - (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;
 - (e) so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards are satisfied as respects the availability of gas to their domestic customers; and
 - (f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;hereinafter referred to as the "**relevant objectives**".
- 1A. In paragraph 1 sub-paragraph (e), "domestic customer supply security standards" means, subject to paragraph 1B,
 - (a) the availability of a supply of gas which would equal the peak aggregate daily demand for gas by the relevant gas supplier's current domestic customers which, having regard to historical weather data derived from at least the previous 50 years and other relevant factors, is likely to be exceeded (whether on one or more days) only in 1 year out of 20 years; and
 - (b) the availability of supplies of gas-

- (i) over a year which would equal the aggregate annual demand for gas by those customers; and
 - (ii) over the first six months of a year which would equal the aggregate demand for gas by those customers during such a six month period,which, in each case, having regard to such data as aforesaid and other relevant factors, is likely to be exceeded only in 1 year out of 50 years.
- 1B. For the purposes of paragraph 1A, "daily" means over a period beginning at 6am on one day and ending immediately before 6am on the following day and "year" means a period of 12 months beginning with 1 October; and if, after consultation with all gas suppliers, gas shippers and gas transporters, with the Health and Safety Executive and the National Consumer Council, the Authority is satisfied that the domestic supply security standard would be adequate if paragraph 1A were modified-
 - (a) by the substitution, in paragraph 1A(a) or (b), of a reference to data derived from a period of less than the 50 previous years;
 - (b) by the substitution in paragraph 1A(a) of a higher probability than the 1 in 20 years mentioned in that paragraph; or
 - (c) by the substitution in paragraph 1A(b) of a higher probability than the 1 in 50 years mentioned in that paragraph,the Authority may, subject to paragraph 1C, make such modifications by notice which-
 - (i) is given and published by the Authority for the purposes of this condition generally; and
 - (ii) specifies the modifications and the date on which they are to take effect.
- 1C. Paragraph 1A(a) shall only be modified if, at the same time, the Authority makes similar modifications to-
 - (a) paragraph 2(b) of Standard Special Condition A9 (Pipe-Line System Security Standards); and
 - (b) sub-paragraph (b) of the definition of "security standards" in standard condition 1 (Definitions and Interpretation) of the standard conditions of gas shippers' licences
- 2. In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).

Network Code

- 3. Subject to paragraph 4, in respect of the pipe-line system to which this licence relates, the licensee shall, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the "**network code**") setting out (together with the terms of any

other arrangements which the licensee considers it appropriate to set out in the document):

- (a) the terms of the arrangements made in pursuance of paragraph 1 save in so far as they relate to matters regulated by standard condition 4B (Connection Charges etc) or are contained in such an agreement, or an agreement of such a class or description, as may be designated by the Authority for the purposes of this condition; and
- (b) the network code modification procedures established pursuant to paragraph 7 to the extent that such procedures differ from those set out in the uniform network code following Authority consent pursuant to paragraph 8

and the licensee shall furnish the Authority with a copy thereof.

4. Where the holder of this licence also holds, in the same legal entity, one or more other gas transporter licences for relevant gas transporters, it may apply to the Authority for written consent to prepare a single network code in respect of the pipe-line systems to which those licences relate, which consent may be granted subject to such conditions as the Authority may direct.
5. The network code prepared by or on behalf of the licensee shall incorporate by reference the terms of the uniform network code except where the Authority consents otherwise in writing; and references in the conditions of this licence to the network code include the uniform network code (as may be varied from time to time) as so incorporated, unless otherwise stated.

Uniform Network Code

6. The licensee shall, together with the other relevant gas transporters, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the "**uniform network code**") setting out:
 - (a) the terms of transportation arrangements established by the licensee and other relevant gas transporters, to the extent that such terms are common, or are not in conflict, between relevant gas transporters; and
 - (b) the network code modification procedures established pursuant to paragraph 7, which are, subject to paragraph 8, incorporated by reference into each network code prepared by or on behalf of each relevant gas transporter,

and the licensee shall furnish the Authority with a copy thereof.

Network Code Modification Procedures

7. The licensee shall, together with the other relevant gas transporters, establish and operate procedures ("**network code modification procedures**"), for the modification of the uniform network code and/or of any network code prepared by or on behalf of each relevant gas transporter (including modification of the network code modification procedures themselves) so as to better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives.

8. In accordance with paragraphs 5 and 6, unless the Authority consents otherwise in writing, the network code modification procedures shall be contained in the uniform network code.
9. The network code modification procedures shall provide for:
 - (a) a mechanism by which any of
 - (i) the uniform network code; and
 - (ii) each of the network codes prepared by or on behalf of each relevant gas transporter,
may be modified;
 - (b)
 - (i) the making of proposals for the modification of the uniform network code in accordance with paragraph 10 (a) of this condition; and/or
 - (ii) the making of proposals for the modification of a network code prepared by or on behalf of a relevant gas transporter in accordance with paragraph 11(a) of this condition;
 - (c) the making of alternative modification proposals in accordance with paragraphs 10(b) and 11(b) of this condition, except in a case where the Authority otherwise directs in writing;
 - (d) the giving of adequate publicity to any such proposal including, in particular, drawing it to the attention of all relevant gas transporters and all relevant shippers and sending a copy of the proposal to any person who asks for one;
 - (e) the seeking of the views of the Authority on any matter connected with any such proposal;
 - (f) the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented; and
 - (g) where the Authority accepts that the uniform network code or a network code prepared by or on behalf of a relevant gas transporter may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable.
10. In respect of the uniform network code:
 - (a) a modification proposal may be made by the following:
 - (i) the licensee,
 - (ii) each other relevant gas transporter,
 - (iii) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification, and/or

- (iv) any other relevant person (a "**third party participant**") identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and
 - (b) where a modification proposal has been made under paragraph 10(a) of this condition (an "**original proposal**") alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) of this condition with the exception of the person who made the original proposal.
- 11. In respect of each network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it):
 - (a) a modification proposal may be made by one of the following:
 - (i) the licensee, to the extent that the modification proposed relates to the pipe-line system to which this licence relates,
 - (ii) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification;
 - (iii) a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates; and/or
 - (iv) any other relevant person (a "**third party participant**") identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and
 - (b) where a modification proposal has been made under paragraph 11(a) of this condition (an "**original proposal**"), alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 11(a) of this condition with the exception of the person who made the original proposal.
- 12. Subject to paragraphs 9, 10 and 11 of this condition, the network code modification procedures may include provisions which differ as between proposed modifications to the uniform network code and proposed modifications to each network code prepared by or on behalf of each relevant gas transporter (excluding the terms of the uniform network code incorporated within it).

Modification of Network Code and Uniform Network Code

- 13. The licensee shall not make any modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) or make or permit any modification to the uniform network code except:
 - (a) to comply with paragraph 15(b) or 16; or
 - (b) with the written consent of the Authority;and shall furnish or cause to be furnished to the Authority a copy of any such

modification made.

14. Where:

- (a) the Health and Safety Executive have given a notice to the licensee in pursuance of this paragraph referring to a matter relating to the protection of the public from dangers arising from the conveyance of gas through the pipe-line system to which this licence relates; and
- (b) a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code could, consistent with the relevant objectives, appropriately deal with the matter,

the licensee shall propose such a modification in accordance with the network code modification procedures, and any requirement that a modification be such as to better facilitate the achievement of the relevant objectives shall be treated as met if the modification is consistent with those objectives.

15. Where a proposal is made in accordance with the network code modification procedures to modify the network code prepared by or on behalf of the licensee, (excluding the terms of the uniform network code incorporated within it) or the uniform network code the licensee shall:

- (a) as soon as is reasonably practicable, give notice to the Authority:
 - (i) giving particulars of the proposal;
 - (ii) where an alternative proposal is made in respect of the same matter as the original proposal, giving particulars of that alternative proposal;
 - (iii) giving particulars of any representations by:
 - (aa) the licensee,
 - (bb) any other relevant gas transporter,
 - (cc) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification,
 - (dd) in respect of modifications to a network code (excluding the terms of the uniform network code incorporated within it) only, a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates, or
 - (ee) any other person with respect to those proposals;

(iv) including an assessment of whether and if so the extent to which a modification proposal would better facilitate the achievement of the relevant objectives, such assessment to include, where applicable, an assessment of the financial impact of green house gas emissions on society;

(iv)(v) including a recommendation (on the part of such person or body

as may be provided for in the network code modification procedures) as to whether any proposed modification should or should not be made, and the factors which (in the opinion of such person or body) justify the making or not making of a proposed modification; and

(v)(vi) giving such further information as may be required to be given to the Authority by the network code modification procedures; and

- (b) comply with any direction of the Authority to make a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 15(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives.
16. Where any directions are given to the licensee under section 19 or 21(1) of the Act, the licensee shall make such modifications to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code as may be necessary to enable the licensee to comply with the directions under section 19 or 21(1) of the Act without contravening Standard Special Condition A7 (Requirement to Enter into Transportation Arrangements in Conformity with the Network Code).
17. The licensee shall:
- (a) prepare and publish a summary of (i) the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and (ii) the uniform network code as modified or changed from time to time in such form and manner as the Authority may from time to time direct;
 - (b) make available a copy of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and the uniform network code as modified from time to time to any person who asks for one and makes such payment to (or to a person nominated by) the licensee in respect of the cost thereof as it may require not exceeding such amount as the Authority may from time to time approve for the purposes hereof; and
 - (c) provide, or cause to be provided, a copy of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and the uniform network code as modified from time to time on a web-site freely available to all interested parties (the web-site address of which shall be disseminated to such interested parties).

Determinations by the Authority

18. Where a provision of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code requires that, in circumstances specified in the provision, a determination by the licensee pursuant to that provision in a particular case should be such as is calculated to facilitate the achievement of the relevant objectives, any question arising thereunder as to whether the licensee has complied with that requirement shall be determined by the Authority.
19. The network code modification procedures shall provide that any question arising under the network code modification procedures as to:
 - (a) whether a gas shipper or other person is likely to be materially affected by a proposal to modify the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code were such a proposal to be implemented; or
 - (b) whether representations relating to such a proposal and made in pursuance of the rules have been properly considered by the licensee,shall be determined by the Authority.

Miscellaneous

20. **In this condition “transportation arrangements” shall have the meaning given in Standard Special Condition A3 (Definitions and Interpretation) save that for the purposes of this condition it shall also include LNG storage arrangements.**
 21. **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 LNG storage facilities and its view on that question, considers it appropriate that this condition should be modified by the omission of paragraph 20 then the paragraph shall be omitted with effect from a date specified in a notice published by the Authority for that purpose; the definition of “transportation arrangements” in Standard Special Condition A3 (Definitions and Interpretation) shall apply to this condition; and the reference to this condition in the definition of “transportation arrangements” in Standard Special Condition A3 (Definitions and Interpretation) shall cease to have effect.¹**
 22. If the Authority so consents, this condition shall have effect as if the definition of “transportation arrangements” in Standard Special Condition A3 (Definitions and Interpretation) referred only to gas consisting wholly or mainly of methane.
- 22A. Where the network code makes provision for energy balancing by the licensee, as the energy balancing gas transporter, of the total system**

¹ Inserted by [Special Condition C1](#)

through a market established by the operator of the independent market for balancing (as such terms are defined in Standard Special Condition A16 (Independence of the Independent Market for Balancing)) then the following paragraphs 22B, 22C and 22D shall apply.

22B. The licensee shall, in appointing any such operator as is mentioned in paragraph 22A, use all reasonable endeavours to appoint a person having:

- (a) financial resources,**
- (b) skilled and experienced personnel, and**
- (c) systems**

adequate to ensure that the market is conducted in an orderly and proper manner according to clear and fair rules with a clearing function that enables the licensee and relevant shippers to offset any sale to any one participant in the market against any equivalent purchase from that or any other participant in the market.

22C. The requirement in paragraph 22B shall be treated as satisfied in respect of any appointment if the licensee appoints as operator of the independent market for balancing a person who, at the time of appointment, is:

- (a) a person recognised by the Financial Services Authority under the Financial Services and Markets Act 2000 as an investment exchange; or**
- (b) a person designated by the Authority for the purposes of that paragraph and if that designation has not expired or been revoked.”**

22D. If a person appointed by the licensee in reliance on paragraph 22C ceases to be recognised as provided in sub-paragraph (a) or to be designated as provided in sub-paragraph (b) of that paragraph then the licensee shall use all reasonable endeavours to terminate the appointment of that person and, if the licensee elects that the market operated by that person shall continue to be established, to appoint another person in place of the first person in accordance with paragraph 22B.²

23. Any reference to “relevant shipper” in any of paragraphs 9(d), 9(f), 10(a)(iii), 11(a)(ii), or 15(a)(iii)(cc) shall, where it relates to any proposed modification which could have been proposed by a third party participant under the network code modification procedures, be treated as if it were also a reference to all such third party participants.

24. (a) In this condition:

² Inserted by [Special Condition C6](#)

“combined pipe-line system” means the pipe-line system to which this licence relates and the pipe-line system of each other relevant gas transporter taken as a whole;

“network code modification procedures” means the modification procedures referred to in paragraph 7 of this condition;

- (b) Where the context requires,
- (i) references to a network code shall include the equivalent document prepared by each other relevant gas transporter (as from time to time modified) pursuant to the condition in its licence corresponding to this condition; and
 - (ii) references to transportation arrangements shall include the corresponding arrangements made by each other relevant gas transporter.
- (c) For the purposes of this condition, relevant shipper shall have the meaning given to that term in Standard Special Condition A3 (Definitions and Interpretation) and references to a relevant shipper include any gas shipper which is a relevant shipper for the purposes of the licence of any relevant gas transporter.