

To: All gas transporters for whom standard condition 9 (Network Code and Uniform Network Code) of their gas transporter licence is in effect.

**NOTICE OF MODIFICATION OF STANDARD CONDITION 9 (NETWORK CODE AND UNIFORM NETWORK CODE) OF THE GAS TRANSPORTER LICENCES UNDER SECTION 23(1)(b) OF THE GAS ACT 1986**

1. In accordance with paragraph 23(3) and (4) of the Gas Act 1986 (the "Act"), the Gas and Electricity Markets Authority (the "Authority") hereby gives notice that it proposes to modify, in the manner as set out in the schedule to this Notice, Standard Condition 9 (Network Code and Uniform Network Code) of the gas transporter licences granted, or treated as granted, under section 7 of the Gas Act 1986 (the "Act").
2. In summary, the effect of the proposed licence modification is to obligate gas transporters, for whom standard condition 9 of their licence is in effect (the "Relevant Licence Holder"), to include, when providing a notice setting out the code panel's recommendation on a proposal for modification of the code to the Authority, a detailed explanation of whether and, if so how, the proposed modification would better facilitate the achievement of the relevant objectives and the code panel's assessment (where applicable) of the economic impacts of greenhouse gas emissions ("GHG") in accordance with Ofgem guidance published from time to time, as set out in the Code Governance Review Final Proposals published on 31 March 2010<sup>1</sup> (the "Final Proposals").
3. In summary, the reasons for proposing this licence modification are that, as part of the Code Governance Review, we have identified a number of deficiencies in the existing code arrangements which the Final Proposals seeks to remedy. Particularly, in June 2008, we issued guidance to industry participants specifying that the costs of GHG emissions should be taken into account by industry in evaluating and assessing code modification proposals. However, while industry has taken steps to incorporate the guidance into procedures, we considered that there was a continuing perception of this being desirable rather than essential. There was also some uncertainty on whether this guidance was limited only to emissions or other environmental impacts, such as upon flora and fauna. The detailed reasons for proposing the licence modification are contained in the following documents:
  - a. Code Governance Review: Final Proposals, Ofgem Ref: 43/10.
  - b. Code Governance Review: Governance of charging methodologies: Initial proposals - Ofgem Ref: 108/09.

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<sup>1</sup> A copy of the Code Governance Review Final Proposals can be found here: [http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=CGR\\_Finalproposals\\_310310.pdf&refer=Licensing/IndCodes/CGR](http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=CGR_Finalproposals_310310.pdf&refer=Licensing/IndCodes/CGR).

- c. Code Governance Review: Major Policy Reviews and Self-Governance - Initial Proposals - Ofgem Ref: 84/09.
  - d. Code Governance Review – role of code administrators and small participant/consumer initiatives – initial proposals - Ofgem Ref: 85/09.
  - e. Review of Industry Code Governance - Environment and Code Objectives - Ofgem Ref: 66/09.
  - f. Review of Industry Code Governance – Code Administrators Working Group - Ofgem open letter, 20 April 2009.
  - g. Review of Industry Code Governance – role of code administrators and small participant/consumer initiatives - Ofgem Ref: 173/08.
  - h. Review of Industry Code Governance – Environment and Code Objectives, Ofgem open letter, 21 November 2008.
  - i. Code Governance Review: Charging methodology governance options - Ofgem Ref: 132/08.
  - j. Review of industry code governance - scope of review - Ofgem Ref: 92/08.
  - k. Corporate Strategy and Plan 2008-2013 - Ofgem Ref: 34/08.
  - l. Open letter announcing review of industry code governance - Ofgem Ref: 284/07.
4. Documents referred to in this Notice are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, Westminster, SW1P 3GE (020 7901 7003 or [library@ofgem.gov.uk](mailto:library@ofgem.gov.uk)) or from the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
5. Any representations or objections to the proposed licence modifications may be made on or before 1 July 2010 to:
- Clare Cameron  
Licensing and Codes Manager, Industry Codes & Licensing  
Ofgem  
9 Millbank  
Westminster  
SW1P 3GE
- Or by email to [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)
6. Only Relevant Licence Holders may register their formal objection, if any, to a proposed modification, although any person may make representations. A pro forma that Relevant Licence Holders may wish to use in order to register a statutory objection is appended to this Notice.

7. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication.
8. Subject to the outcome of this statutory consultation and consideration of respondents' views, it is the intention of the Authority to direct the proposed modification to Standard Condition 9 of the gas transporter licences to have effect on and from 31 December 2010.

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**Mark Cox, Associate Partner, Industry Codes and Licensing**

**Duly authorised on behalf of the Gas and Electricity Markets Authority**

**3 June 2010**

## NOTICE OF STATUTORY OBJECTION

### **Proposed Modification of Standard Condition 9 of the gas transporter licence**

In response to the statutory notice dated 3 June 2010 in respect of the above proposed modification, this notice constitutes a statutory objection to that proposal on behalf of<sup>2</sup> ..... I confirm that I am duly authorised to give this notice on behalf of the above named company or each of the above named companies.

Signed<sup>3</sup>: .....

Date: .....

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<sup>2</sup> Please state full name of each relevant licence holder making the objection

<sup>3</sup> Please include address for acknowledgement, preferably including email address

## SCHEDULE

### PROPOSED MODIFICATION OF THE STANDARD CONDITION 9 OF THE GAS TRANSPORTER LICENCES

Standard condition 9 of the gas transporter licence is proposed to be modified in the manner set out in this schedule. The proposed insertions are shown underlined.

#### Condition 9. Network Code and Uniform Network Code

##### Transportation Arrangements

1. The licensee shall establish transportation arrangements, pursuant to paragraphs 2 and 5 of this condition, in respect of matters other than those to which Standard Conditions 4 (Charging of Gas Shippers - General) and 4A (Obligations as Regards 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 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 between relevant shippers and between relevant suppliers;
  - 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 referred to in paragraphs 2 and 5 respectively of this condition;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 condition 16 (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.

#### *Network Code*

2. The licensee shall prepare 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) 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 4C (Charging Gas Shippers – Supplemental Connection Charges) 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.
3. 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.
4. The network code 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*

5. The licensee shall, together with the other relevant gas transporters, prepare 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 6.

*Network Code Modification Procedures*

6. 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.
7. The network code modification procedures shall provide for:
  - a. a mechanism by which
    - (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 8; 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 9(a);
  - c. the making of alternative modification proposals in accordance with paragraphs 8(b) and 9(b);
  - 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;
  - g. a proposed implementation date such as to enable any modification proposal to be made as soon as practicable after receipt of a direction under paragraph 12(b);
  - h. establishing and maintaining, in accordance with such procedures for appointment or election as may be specified, a panel (the "panel") which is to be responsible, by way of proceedings as may be specified, for the governance and administration of the uniform network code; and
  - i. 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.
8. In respect of the uniform network code:

- a. a modification proposal may be made by the following:
    - (i) the licensee;
    - (ii) any 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 8(a) (an "original proposal") alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 8(a) with the exception of the person who made the original proposal.
9. In respect of each network code (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; or
    - (iii) a third party participant; and
  - b. where a modification proposal has been made under paragraph 9(a) in respect of any such original proposal, by any of the parties listed in paragraph 9(a) with the exception of the person who made the original proposal.

*Modification of Network Code and the Uniform Network Code*

10. The licensee shall not make or permit any modification to the network code or to the uniform network code except:
- a. to comply with paragraph 12(b) or 13; or
  - b. with the written consent of the Authority;
- and shall furnish the Authority with a copy of any such modification made.
11. 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 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.
12. Where a proposal is made in accordance with the network code modification procedures to modify the network code or the uniform network code the licensee shall:
- a. as soon as is reasonably practicable, and no later than the time specified in the network code modification procedures, 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 the licensee, any relevant shipper or any other person with respect to those proposals;
  - (iv) including a recommendation by the Panel as to whether any proposed modification should or should not be made, and the factors which (in the opinion of such body) justify the making or not making of a proposed modification, which shall include:
    - (aa) a detailed explanation of whether and, if so how, the proposed modification would better facilitate the achievement of the relevant objectives; and
    - (bb) where the impact is likely to be material, the evaluation of the proposed modification in respect of the relevant objectives shall include an assessment of the quantifiable impact of the proposed modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time; and
  - (v) 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 and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 12(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code 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.
13. 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 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 Condition 4E (Requirement to Enter into Transportation Arrangements in Conformity with the Network Code).
14. The licensee shall provide a copy of the network code 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 given adequate publicity).

*Determinations by the Authority*

15. Where a provision of the network code 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.
16. The network code modification procedures shall provide that any question arising under those 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 and/or the uniform network code were it 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.
17. Following a direction under paragraph 12(b), the implementation date may be altered with the consent of, or as directed by the Authority.

*Joint Governance Arrangements*

18. The licensee shall:
- a. together with all other relevant gas transporters, establish, develop and operate (or otherwise procure the operation of (including without limitation on a sub-contracted basis)) arrangements ("joint governance arrangements") for:
    - (i) the administration of the network code modification procedures;
    - (ii) giving effect to the provisions of Standard Conditions 4 (Charging of Gas Shippers - General) and 4A (Obligations as Regards Charging Methodology) relating to the administering of the coordination of the modification of the licensee's and the other relevant gas transporters' respective charges or reserve prices or charging methodologies (as the case may be);
    - (iii) the administration of such matters as are provided for in the uniform network code to be implemented by the relevant gas transporters on a common, joint or coordinated basis;
    - (iv) so far as is consistent with sub-paragraphs (i) to (iii), the promotion of efficiency in the implementation and administration of the network code and/or uniform network code; and
    - (v) such other matters as they may decide, subject to their licence and statutory obligations;
  - b. enter into an agreement ("JGA agreement") with the other relevant gas transporters, providing for the establishment and operation of the joint governance arrangements;
  - c. provide to the Authority a copy of the JGA agreement and each amendment thereof; and
  - d. publish a copy of the JGA agreement as modified from time to time, with the exception of information agreed in writing as being confidential by the Authority.
19. The joint governance arrangements shall, without limitation, be such as are calculated, consistent with the efficient discharge of each relevant gas transporter's obligations under the Act and its respective licence:
- a. to ensure compliance with the network code modification procedures;
  - b. so far as consistent with sub-paragraph (a), to promote efficiency in the administration of the network code modification procedures and the other matters subject to the JGA agreement; and
  - c. to avoid undue discrimination or preference as between the relevant gas transporters.

*Miscellaneous*

20. If the Authority so consents, this condition shall have effect as if the definition of "transportation arrangements" in Standard Condition 1 (Definitions and Interpretation) referred only to gas consisting wholly or mainly of methane.

21. In this condition "relevant gas transporter" shall mean the holder of a GT licence, for whom this condition is in effect.