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To generators, shippers,
suppliers, network companies,
consumers and their
representatives, the sustainable
development community,
investors and other interested
parties.

Date: 1 February 2013

Dear Colleague,

Modifications to the ring fence conditions in network operator licences

On 17 December 2012 we published our formal proposals for modifications to the ring fence conditions in energy network operator licences and issued the statutory consultation notices required under section 23(2) of the Gas Act 1986 and section 11A(2) of the Electricity Act 1989. The reasons for our proposals were set out in our open letter dated 17 December 2012¹ and the associated documents scheduled in Appendix 1 to that letter. Our formal proposals reflected feedback from respondents and development work over a three year review and consultation period.

Responses to the statutory consultation

We received four responses to the statutory consultation which have been published on the Ofgem website¹. Three of the respondents restated views that a requirement for licensees to have two sufficiently independent directors² is disproportionate and/or unjustified. No new substantive points were raised but the respondents referred to the arguments set out in their previous, detailed consultation responses.

One of the respondents commented that an explicit pass through adjustment for costs associated with the proposed licence modifications should be included in price control arrangements and also set out a number of suggested corrections in relation to the drafting set out in the statutory consultation notices.

We have carefully considered the responses to the statutory consultation and, in particular, reviewed all of the arguments for and against a requirement for sufficiently independent directors. Having completed this review, we have decided that we should proceed with the proposed modifications so that the ring fence regime remains fit for purpose for years to come. Our detailed reasons for updating the ring fence conditions and the evolution of the modifications are explained and described in detail in the associated documents listed at Appendix 1 to this letter. We have made a number of minor drafting corrections and clarifications in response to the statutory consultation feedback received and these are set out in Appendix 2.

¹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=414&refer=Networks/Policy>

² Not applicable to independent distribution network operators or offshore transmission network operators

Licence modification notices

We have today issued the formal notices to licensees under (as applicable) section 23(1)(b) of the Gas Act 1986 and section 11A(1)(b) of the Electricity Act 1989 which make the licence modifications. The notices have been published together with this letter on the Ofgem website³. The original, sealed copies of the modification notices have been placed on the public register files for the licensees concerned. Copies of this letter have been sent to:

- The secretary of State for Energy and Climate Change;
- The Scottish Executive;
- The Welsh Assembly;
- The Health and Safety Executive; and
- Consumer Focus.

Energy Licence Modification Appeals

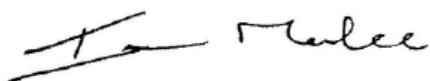
Section 23B of the Gas Act 1986 and section 11C of the Electricity Act 1989 set out the provisions for appeals to the Competition Commission against the Authority's decisions on licence modifications. The Energy Licence Modification Appeals Rules⁴ contain the detailed procedural requirements in relation to appeals and contain important information relating to notices and time limits.

Directions of form of ultimate controller undertakings

In our letter of 17 December 2012 we also updated our intention to issue directions, under existing licence provisions, setting out the forms of ultimate controller undertaking that should be obtained by licensees when a requirement arises after 1 April 2013. Accordingly, we have today issued directions to licensees, and copies of the directions concerned have been placed on the public register files and published alongside this letter on the Ofgem website.

If you have any queries on the matters referred to in this letter please feel free to contact Paul Darby in Ofgem's Regulatory Finance team (paul.darby@ofgem.gov.uk).

Yours sincerely



Ian Marlee
Senior Partner, Smarter Grids and Governance (Transmission)

³ <http://www.ofgem.gov.uk/Networks/Policy/Pages/Policy.aspx>

⁴ <http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/publications/cc14.pdf>

Appendix 1 to Ofgem's letter:
Modifications to the ring fence conditions in network operator licences – dated 1 February 2013

List of associated documents (most recent publication first)

- a) Formal proposals letter dated 17 December 2012, statutory consultation notices and published stakeholder responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=414&refer=Networks/Policy>
- b) Updated Proposals for Changes to Ring Fence Conditions and their Impacts – 11 October 2012 (Ref 129/12) and published stakeholder responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=403&refer=Networks/Policy>
- c) Position Paper – Changes to the Ring Fence Conditions in Network Operator Licences – 3 July 2012 (Ref 85/12) and published stakeholder responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=392&refer=Networks/Policy>
- d) Regulatory Ringfence Update letter dated 13 March 2012
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=367&refer=Networks/Policy>
- e) Ofgem website page with Consultation on Proposed Modifications to the Ring Fence Conditions (Ref 42/11) and published stakeholder responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=268&refer=Networks/Policy>
- f) Ofgem website page with Impact Assessment /Consultation - Review of the „Ring Fence Conditions in Network Operator Licences (Ref 30/10) and published stakeholder responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=268&refer=Networks/Policy>

**Drafting changes made in response to statutory consultation feedback
(shown in blue mark-up)**

Electricity Distribution Standard Conditions

Condition 30. Availability of resources

- 30.7 The licensee must inform the Authority in Writing immediately if:
- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 30.2(a), 30.2(b), 30.4(a) or 30.4(b);
or
 - (b) the directors of the licensee consider that any adverse circumstance that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 30.2(c) or Certificate 3R under paragraph 30.4(c) has materially worsened.
- 30.14 The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of intervention plan in paragraph 30.16 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Electricity Transmission Standard Conditions

Condition B3: Disposal of relevant assets and restrictions on charges over receivables

6. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a Rreceivable or class or classes of Rreceivables where:
 - (a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and
 - (b) the proceeds of the indebtedness of the licensee which is to be secured are used to clearrepay the existing indebtedness referred to in sub-paragraph (a).

Condition B7: Availability of Resources

6. With effect from 1 August 2013, the licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:
 - (a) **Certificate 1C**

"After making enquiries the licensee's directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition B4 (Provision of information to the Authority), standard condition B6 (Restriction on Activity and Financial Ring Fencing), standard condition B7 (Availability of Resources), standard condition B8 (Undertaking from ultimate controller), standard condition B10 (Credit Rating) and standard condition B9 (Indebtedness)."
7. The licensee must inform the Authority in writing immediately if:
 - (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or

- (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

13. The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and thereafter, maintain ~~The licensee must prepare by 1 April 2014 and at all times thereafter maintain~~ an intervention plan fulfilling the criteria described in the definition of intervention plan in paragraph 15 below.

14. The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of intervention plan in paragraph 15 below to be included in the intervention plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Condition B9: Indebtedness

1. In addition to the requirements of standard condition B3 (Disposal of relevant assets **and restrictions on charges over r**Receivables), the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
 - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee or any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a permitted purpose; and
 - (iv) (if the transaction is within the ambit of standard condition B3 (Disposal of relevant assets **and restrictions on charges over r**Receivables) in accordance with that condition);

8. The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant contained in any loan agreement, commercial paper, bond issue or committed facility that it has entered into with a counterparty, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in wwriting to the Authority;

or

- (c) in response to a written request from the licensee, either the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger the provisions of paragraphs 3 or 9, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

Condition A1: Definitions and interpretation

“investment grade”

means in relation to any issuer ~~credit rating or instrument~~ credit rating unless otherwise specified

(a) unless sub-paragraph (b) below applies:

- (i) ~~an issuer~~ rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries;

“issuer credit rating”

means

- (a) an issuer **credit** rating by Standard & Poor’s Ratings Group or any of its subsidiaries

Condition B22: Requirement for sufficiently independent directors

4. The reference to ‘director’ in sub-paragraph 3(b) does not include appointment as a non-executive director of:

- (a) an associate of the licensee that is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
- (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a permitted purpose (as that term is defined in Standard Condition A1 (Definitions [for the standard conditions and interpretation](#))); or
- (c) a qualifying group company.

12. In this condition:

“associate” means:

- (a) an affiliate or related undertaking of the licensee;
- (b) an ultimate controller of the licensee;
- (c) a participating owner of the licensee; or
- (d) a common control company.

“common control company” means any company, any of whose ultimate controllers (applying the definition set out in Standard Condition A1 (Definitions [for the standard conditions and interpretation](#)) but substituting that company for the licensee) is also an ultimate controller of the licensee.

“participating owner” - For the purposes of the definition of associate above, a person is subject to a participating interest by another person (a “participating owner”) if:

- (a) that other person holds a participating interest in the person; or
- (b) the person is subject to a participating interest by a person who is himself subject to a participating interest by that other person.

“participating interest” has the meaning given in section 421A of the Financial Services and Markets Act 2000.

Condition E8: Availability of Resources

9. The licensee must within 7 days of the date that this condition comes into effect and then by 31 July in each subsequent calendar year, give the Authority a certificate that has been approved by a resolution of the licensee’s board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

“After making enquiries the licensee’s directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition E5 (Provision of information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from ultimate controller), standard condition E11 (Credit Rating of Licensee) and standard condition E10 (Indebtedness).

or

(b) **Certificate 2C**

“In the opinion of the licensee’s directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by standard condition E5 (Provision of information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from ultimate controller), standard condition E11 (Credit Rating of Licensee) and standard condition E10 (Indebtedness).

10. The licensee must inform the Authority in writing immediately if:
- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 6(a) or 6(b); or
 - (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 6(c) have materially worsened.
- ~~16.~~ The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and thereafter, maintain~~The licensee must prepare by 1 April 2014 and at all times thereafter, maintain~~ an intervention plan fulfilling the criteria described in the definition of intervention plan in p~~P~~Paragraph 18 below.
17. The requirement for the information described in any of sub-paragraphs (a) to (k) in the definition of intervention plan in paragraph 18 below to be included in the intervention plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Condition E11: Credit Rating of Licensee

2. The licensee may propose to the Authority alternative financial arrangements which may include, but ~~are is~~ not limited to, providing a security, for example in the form of a deposit or an unconditional irrevocable letter of credit, the latter being exercisable under English law within GB drawn on a bank with a credit rating equivalent to at least "A-" with a credit rating agency recognised by Ofgem (ie Standard & Poor's, Moodys, ~~or~~ Fitch, or DBRS) residing in a country with a credit rating of at least "A" to a value equal to twelve months gross operating expenditure. Such a proposal by the licensee shall contain sufficient information to enable the Authority to consider whether the proposed alternative financial arrangements demonstrate sufficient financial standing.

Gas Transporter Standard Conditions

Condition 29: Disposal of Assets and restrictions on charges over Receivables

6. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a Receivable or class or classes of Receivables where:
 - (a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and
 - (b) the proceeds of the indebtedness of the licensee which is to be secured are used to ~~clear~~ repay the existing indebtedness referred to in sub-paragraph (a).

Condition 44: Availability of Resources

6. With effect from 1 August 2013, the licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:
 - (a) **Certificate 1C**

“After making enquiries the licensee's directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by Standard Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of the Licensee) and Standard Condition 47 (Indebtedness).”
7. The licensee must inform the Authority in writing immediately if:
 - (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or

(b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in [the](#) form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

14. The requirement for the information described in any of sub-paragraphs (a) to (k) in [the definition of intervention plan in](#) paragraph 15 below to be included in the intervention plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Gas Transporter Standard Special Conditions

Standard Special Condition A27: Disposal of Assets and restrictions on charges over Receivables

7. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a ~~r~~Receivable or class or classes of ~~r~~Receivables where:
 - (a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and
 - (b) the proceeds of the indebtedness of the licensee which is to be secured are used to ~~clear~~repay the existing indebtedness referred to in sub-paragraph (a).

Standard Special Condition A37: Availability of Resources

7. The licensee must inform the Authority in writing immediately if:
 - (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or
 - (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in the form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.
8. Subject to paragraph 11, the directors of the licensee must not declare or recommend a dividend, and ~~—~~the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out in paragraphs 9 and 10 below.
13. The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and ~~at all times~~ thereafter, maintain an intervention plan fulfilling the criteria described in the definition of intervention plan in ~~p~~Paragraph 16 below.

14. The requirement for the information described in any of sub-paragraphs (a) to (k) in [the definition of intervention plan in paragraph 16 below](#) to be included in the intervention plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

“**participating owner**” - For the purposes of the definition of [Associate](#) above, a person is subject to a participating interest by another person (a [Participating Owner](#)) if:

Standard Special Condition A39: Indebtedness

6. The circumstance described by this paragraph is that ~~(e)~~ any issuer credit rating held by the licensee is BBB- by Standard & Poor’s Ratings Group or Fitch Ratings Ltd or Baa3 by Moody’s Investors Service, Inc. or **BBB (low) by DBRS Ratings Ltd or any of its affiliates** (or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade **issuer** credit rating), or is an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of Standard Special Condition A38 (Credit Rating of the Licensee) and:
- (a) ~~(i)~~ is on review for possible downgrade; or
 - (b) ~~(ii)~~ is on Credit Watch or Rating Watch with a negative designation; or, where neither ~~(ia)~~ nor ~~(iib)~~ applies:
 - (c) ~~(iii)~~ the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub-~~ [this](#) paragraph ~~(e)~~ 6 which at the relevant time has assigned the lower or lowest investment grade issuer credit rating held by the licensee has been changed from stable or positive to negative.
94. Where **under the provisions of paragraph 3 applies**, the licensee **is prohibited from entering into or completing any** transaction of a type referred to or described in paragraph 1(b), the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any **affiliate or related undertaking associate** of the licensee as described or referred to in paragraph 1(b), otherwise than by way of:

.....

“common control company”	means any company, any of whose ultimate controllers (applying the definition set out in Standard Special Condition A3 (Definitions and Interpretation) but substituting that company for the licensee) is also an U ultimate C controller of the licensee.
“cross-default obligation”	<p>means a term of any agreement or arrangement whereby the licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, of increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:</p> <ul style="list-style-type: none"> (i) that liability can arise only as the result of a default by a subsidiary of the licensee; (ii) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and (iii) that subsidiary carries on business only for a purpose within sub-paragraphs 1(a), 1(b), 1(c) or 1(d) of the definition of permitted purpose set out in Standard Special Condition A32 (Definitions and InterpretationDefinition of Permitted Purpose).
“participating owner”	For the purposes of the definition of A associate above, a person is subject to a participating interest by another person (a “participating owner”) if:

Standard Special Condition A42: Requirement for sufficiently independent directors

4. The reference to 'director' in sub-paragraph 3(b) does not include appointment as a non-executive director of:
- (a) an associate of the licensee that is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
 - (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a permitted purpose (as that term is defined in Standard Special Condition A32 ([Definitions and Interpretation](#)~~Definition of Permitted Purpose~~)); or
 - (c) a qualifying group company.

.....

“participating interest” has the meaning given in section 421A of the Financial Services and Markets Act 2000.

National Grid Gas plc – Special Condition C1

Special Condition C1. Amendments to Standard Special Conditions relating to LNG

7. Amendments to Standard Special Condition A27 (Disposal of Assets)

Standard Special Condition A27 (Disposal of Assets ~~and restrictions on charges over Receivables~~) shall be amended by:

- (a) the insertion of the following definition of LNG storage asset in paragraph ~~6 132~~ between the definitions of “disposal” and ~~“relevant premises”~~“receivable”:

““LNG storage asset”	means any of the LNG storage facilities or anything used by the licensee in connection with the provision of such facilities;” and
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- (b) the insertion of the words “any LNG storage asset and/or” after the word “means” in the definition of “transportation asset” in paragraph ~~6 13~~; and
- (c) inserting the following new paragraph ~~7 143~~,

~~“7143~~. 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 the definition of “LNG storage asset” from paragraph ~~6 132~~ and the words “any LNG storage asset and” where they occur in paragraph ~~6 132~~ of this condition then these omissions shall be made with effect from a date specified in a notice published by the Authority for that purpose.”

~~8. Amendments to Standard Special Condition A30 (Regulatory Accounts)~~

~~Standard Special Condition A30 (Regulatory Accounts) shall be amended by:~~

- (a) ~~the insertion of the words “the LNG storage business” in sub-paragraph 1 (b) in substitution for the words “NOT USED”;~~
- (b) ~~the insertion of the words “the LNG storage business,” after “regulatory accounts for” in paragraph 12; and~~
- (c) ~~the insertion of the following in paragraph 14 in substitution for the words “NOT USED”;~~

~~“14. 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 the Authority’s view on that question, considers it appropriate that this condition be modified by the omission of sub-paragraph 1(b) and references to “LNG storage business” then these omissions shall be made with effect from the date specified in a notice published by the Authority for that purpose.”~~

98. **Amendments to Standard Special Condition A32 (~~Definition of Permitted Purpose Definitions and Interpretation~~)**

Standard Special Condition A32 (~~Definition of Permitted Purpose Definitions and Interpretation~~) shall be amended by the insertion after substitution in sub-paragraph (a) of the definition of “permitted purpose” of an additional sub-paragraph (e) containing the words “the ~~transportation and~~ LNG storage business and LNG import or export facilities activities where applicable” ~~for the words “the transportation business”.~~

.....and paragraph renumbering consequent to the deletion of paragraph 8 above.