



**Association of
Independent
Gas Transporters**

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Andrew Burgess
Associate Partner, Transmission and Distribution Policy
Ofgem
9 Millbank
London
SW1P 3GE

By email only to Andrew.Burgess@ofgem.gov.uk; Copy to Jacob.Kane@ofgem.gov.uk

Dear Mr. Burgess,

The Association of Independent Gas Transporter's response to the Statutory Consultation on changes to Special Condition 1 of the Independent Gas Transporters' (IGTs) licence

I am writing on behalf of the members of the AIGT*, in response to your '*Statutory Consultation on changes to Special Condition 1 of the Independent Gas Transporters' (IGTs) licence* published on the 31st January 2014.

Association members have been actively engaging with Ofgem on the licence condition's discrepancies since 2012 and are pleased to see that the proposed drafting reflects both the discussions between IGTs and Ofgem, and Ofgem's *Independent Gas Transporters' Relative Price Control – decision on next steps* letter dated 18th September 2013.

The AIGT supports the proposed changes to Special Condition 1 of the Independent Gas Transporters' licence put forward by Ofgem in the Statutory Consultation.

Comments outside the scope of this Statutory Consultation

Legal advice from Bond Dickinson

As part of the process of reviewing Ofgem's proposed changes, the Association took legal advice from Bond Dickinson. Bond Dickinson highlighted a number of areas in which the drafting could be improved to remove certain ambiguities and see that the licence condition further reflected the content of the RPC Guidance Notes. Whilst they do not make up an element of the AIGT's response to the above Statutory Consultation, Bond Dickinson's comments (in the form of a suggested amendments table) are provided in the Appendix below for consideration by Ofgem.

AGT members would be happy to discuss any of Bond Dickinson's comments should Ofgem require further clarification.

Paragraphs 12 and 13 of Special Condition 1 (Disapplication Requests)

It is understood that Paragraphs 12 and 13 of Special Condition 1 (Disapplication Requests) are to be the subject of a later consultation which is required as a result of amendments having been made to the Gas Act and Electricity Act. The AIGT understands that amendments to these Acts changed the modifications process to allow the Authority to make amendments to licences and to give licencees a right of appeal. AIGT members would like to point out that this does not cover disapplication requests which are made under and in accordance with the provisions of the licence (i.e. the licence is not modified under a disapplication request). Under the provisions of the licence it is the Authority (not the licencee) who has the option of referring the matter to the Competition Authority. Importantly these paragraphs set out the process steps that need to be followed where the Authority:

- has elected to not refer a disapplication request to the Competition Authority (within 12 months of such request); or,
- has elected to make a reference to the Competition Authority, following a report by the Competition Authority.

AGT members are concerned that Ofgem consider these paragraphs should be revoked, which would leave a process vacuum. The AIGT would welcome further discussions in these areas in developing amendments to both gas transportation and electricity distribution licences.

Yours sincerely,



John Barrett
Secretary, Association of Independent Gas Transporters

*** AIGT Members are:**

GTC Pipelines Ltd - representing GTC Pipelines and Utility Grid Installations; **Independent Pipelines Ltd** - representing Independent Pipelines and Quadrant Pipelines; **ES Pipelines Ltd** - representing ES Pipelines, ESP Networks, ESP Pipelines and ESP Connections; **SSE Pipelines Ltd** - representing SSE Pipelines, **Energetics Gas Ltd** - representing Energetics Gas; and **Fulcrum Pipelines Ltd** - representing Fulcrum Pipelines.

APPENDIX

In **Part 1** we set out proposed amendments to the clauses of Special Condition 1 which are expressly the subject of the statutory consultation. In **Part 2** we set out proposed amendments to other clauses which we believe would help avoid ambiguity or address drafting errors in other clauses of Special Condition 1.

Part 1 – Clauses expressly subject to consultation

Proposed amended drafting (shown underlined)	Consistency between RPC Guidance and Special Condition drafting	Justification/comment
<p><u>Paragraph 2</u></p> <p>2. For premises subject to paragraph 1 above or paragraph 3 (4) of this condition the licensee shall for <u>each</u> such premises, unless the Authority consents otherwise in writing, charge no more than TC_t:</p> <p>(1)</p> <p>(a) Where RC_t is less than C_t and greater than F_t, then</p> $TC_t = RC_t$ <p>(b) Where RC_t is greater than or equal to C_t, then</p> $TC_t = C_t$ <p>(c) Where RC_t is less than or equal to F_t, then</p> $TC_t = F_t$ <p>At Entry-point, then RC_t shall be calculated as follows:</p> $RC_t = SSP - CSEP$ <p>Where t is greater than 1, RC_t shall be calculated as follows:</p> $RC_t = RC_{t-1} \times \left(1 + \frac{wSSP_r}{100} \right)$	<p>The Guidance is clear that the RPC entry charge is specific to each premises (and varies between premises depending, amongst other things, on site location, date of entry into RPC, the property AQ the Connected System AQ and the property and site SOQ).</p>	<p>Without these amendments (and the corresponding amendments in the definitions in paragraph 2(6)) there is a risk of ambiguity because the original drafting implies that the charge is the same for all relevant premises, rather than being determined for each premises individually (as described in the Guidance).</p>

Proposed amended drafting (shown underlined)	Consistency between RPC Guidance and Special Condition drafting	Justification/comment
<p><u>Paragraph 2(2)</u></p> <p>(2) The licensee shall adjust charges on 1 January each year in accordance with this condition. Where the Entry-point is in the immediately preceding period of 1 October to 31 December, the licensee shall not adjust charges in accordance with <u>this paragraph 2 until 1 January following the first anniversary of the Entry-point.</u></p>	<p>The licensee is required to adjust the charges in accordance with paragraph 2 but not until 1 January first following the anniversary of the Entry-point and thereafter annually.</p>	<p>The original drafting stated that "the licensee shall not adjust charges in accordance with paragraph 2 above but shall modify charges in accordance with this condition each 1 January thereafter", which creates ambiguity about whether charges are to be adjusted in accordance with paragraph 2. The proposed amendments eliminate that ambiguity.</p>
<p><u>Paragraph 2(3)</u></p> <p>(3) To determine the level of charges the licensee shall apply Annual Quantity in relation to domestic premises in accordance with standard Annual Quantity as accepted by the Authority <u>at the Entry-point</u>, and for other premises as reasonably estimated and agreed between the licensee and any relevant shipper <u>from time to time</u>, unless the Authority directs otherwise for those other premises. In this paragraph 2 (3) domestic premises excludes any domestic premises where a surcharge <u>may be made</u> pursuant to paragraph 5 of this condition.</p>	<p>The Guidance (paragraph 2.18) states that a New Domestic Property's AQ is fixed and will not be revised due to any changes in the NExA AQ table.</p>	<p>Paragraph 2(3) explains how the AQ is determined for particular premises (for the purposes of determining the level of charges (as opposed to unit rate of charge)).</p> <p>The different treatment of property AQs for RPC purposes (i.e. New Domestic = fixed whereas I&C and Domestic Infill = as revised from time to time) must be reflected in SC1 to avoid the risk of licence breach.</p> <p>The rule for domestic infill premises should apply irrespective of whether the licensee has, in fact, levied a surcharge in a particular case, so</p>

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		"is made" should be changed to "may be made".
<p><u>Paragraph 2(6)</u> Definitions: Annual Quantity means the annual quantity of gas off-taken, or which may be reasonably likely to be off-taken, by a single supply point or connected system exit point;</p> <p>Ct means the charge ceiling as determined in accordance with paragraph 2 (4) of this condition;</p> <p>CSEP means <u>for a premises</u> the relevant licenced gas transporter's connected system exit point charges <u>for premises of that type/category</u> calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;</p> <p>Entry-point means <u>for a premises</u> the date at which t=1 and, with the exception of premises subject to paragraph 3 (4) of this condition, shall be determined <u>unless the Authority otherwise directs the date of the Entry-point</u> as either the date of connection of a premises to the licensee's pipe-line system <u>so that</u> gas has entered the premises' service pipe, or <u>where the licensee elects within 60 days of the contract to connect</u> the date the licensee is contractually bound to provide a connection to the person requiring that connection;</p> <p>Ft means the charge floor as determined in accordance with paragraph 2 (4) of this condition;</p> <p>RPI means the value published in October of each year by the Authority and calculated as the percentage change</p>	<p>Paragraphs 2.37 and 2.38 of the Guidance make clear that there are different unit rates for different types/categories of premises.</p>	<p>Whereas the formulas use annual percentage ($wSSP_r$ and Δ_r) the tables (published by Ofgem and in the licence condition respectively) express the figure as percentage. The drafting is currently ambiguous as to whether the number to be entered as the numerator is the decimal figure in the table (e.g. 0.42) or the figure in the table expressed as a percentage (e.g. 0.0042).</p>

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<p>(whether of a positive or a negative value) in the arithmetic average of the retail price index determined in respect of April to September (both inclusive) of the current calendar year and the arithmetic average of the retail price index determined with respect to April to September of the previous calendar year;</p> <p>RCt means <u>for a premises</u> the relative charge in year ‘t’ as determined in paragraph 2 of this condition.</p> <p>RCt-1 means <u>for a premises</u> the relative charge in the year preceding year ‘t’ as determined in paragraph 2 of this condition.</p> <p>SSP means <u>for a premises</u> the relevant licenced gas transporter’s single supply point charge for premises <u>of that type/category</u> calculated at the prevailing charge in accordance with the prevailing methodology statement for Network Region r at the Entry-point; excepting charges for metering arrangements, meter reading, CSEP administration charges, NTS entry capacity charges where determined by auction, or other charges determined in writing by the Authority;</p> <p>TCt means <u>for a premises</u> the maximum charge the licensee may charge subject to paragraph 2 of this condition in year ‘t’;</p> <p>wSSPr means <u>for a type/category of premises and for each Network Region r, the percentage change from year t-1 to year t in the arithmetic average of the relevant licenced gas transporter’s single supply point charge</u> . Networks Regions r comprise: r1 Scotland, comprising LDZ exit zones SC; r2 North and Yorkshire, comprising LDZ exit zones NO, NE; r3 North West, comprising LDZ exit zones NW; r4 East England, comprising LDZ exit zones EM, EA; r5 West Midlands, comprising LDZ exist zones WM; r6 Wales</p>		

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<p>and South West, comprising LDZ exit zones WA, SW; r7 North London, comprising LDZ exit zones NT; and r8 South and South East, comprising LDZ exit zones SO, SE. The values for wSSPr in respect of each region shall be determined and published in October of each year by the Authority; and</p> <p>Δ_r means the annual percentage change in respect of the Network Region r in which the premises are located, and has a value according to the schedule below:</p> <table border="1" data-bbox="398 584 1059 1235"> <thead> <tr> <th>Region</th> <th>Annual percentage change</th> </tr> </thead> <tbody> <tr> <td>r₁ Scotland</td> <td>0.42</td> </tr> <tr> <td>r₂ North and Yorkshire</td> <td>1.13</td> </tr> <tr> <td>r₃ North West</td> <td>1.40</td> </tr> <tr> <td>r₄ East England</td> <td>1.64</td> </tr> <tr> <td>r₅ West Midlands</td> <td>1.57</td> </tr> <tr> <td>r₆ Wales and South West</td> <td>0.36</td> </tr> <tr> <td>r₇ North London</td> <td>1.23</td> </tr> <tr> <td>r₈ South and South East</td> <td>1.51</td> </tr> </tbody> </table>	Region	Annual percentage change	r ₁ Scotland	0.42	r ₂ North and Yorkshire	1.13	r ₃ North West	1.40	r ₄ East England	1.64	r ₅ West Midlands	1.57	r ₆ Wales and South West	0.36	r ₇ North London	1.23	r ₈ South and South East	1.51		
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<p><u>Paragraph 5</u></p> <p>5. Where, <u>in relation to a premises</u>, charges are made in accordance with paragraph 2, <u>the licensee may also charge</u> a surcharge subject to the following conditions,</p>	<p>Paragraph 3.13 of the Guidance is clear that the Infill Surcharge is payable in addition to (and is not included in) the normal charge.</p>	<p>The conditions in paragraph 3(5) should permit a licensee to recover the infill surcharge in circumstances where the connection to the relevant premises was installed by a predecessor (e.g. where the</p>																		

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<p>(a) a maximum surcharge <u>equal to S_{\max}</u>, where:</p> $S_{\max t} = S_{\max t-1} \times \left(1 + \frac{RPI}{100} \right)$ <p><u>$S_{\max} = 0.3412$ pence per kWh on 1 January 2003 and is adjusted on 1 January each year thereafter in accordance with the formula above.</u> RPI has the same meaning as given in paragraph 2 of this condition;</p> <p>(b) the surcharge has a maximum duration of 20 years from the <u>Entry point for the relevant premises</u></p> <p>(c) the surcharge may only apply to existing domestic premises which were in existence for not less than 6 months prior to the provision of the gas main extended specifically for connection of those premises, and which have not previously received a supply of natural gas;</p> <p>(d) the licensee (<u>or a predecessor of the licensee</u>) has, on request to provide a connection by the owner or occupier of the premises, extended a gas main to specifically connect the premises;</p> <p>(e) the licensee must notify the Authority of the specified amount and specified duration as soon as reasonably practicable but in any event no later than 28 days prior to any such charge falling due; and</p> <p>(f) the Authority may direct the licensee not to make the surcharge within 28 days of the notification in (e) above.</p>		<p>licencee has acquired the relevant pipe-line system from someone else).</p>

Proposed change	Consistency between RPC Guidance and Special Condition drafting	Justification/comment
<p><u>Paragraph 2(2)</u></p> <p><i>Note: Special Licence Condition 1 does not currently reflect the Guidance document in relation to I&C properties in the following respects:</i></p> <ul style="list-style-type: none"> • <i>SC1 does not require the licensee to elect either Option 1 or Option 2 for I&C properties</i> • <i>the rules in the Guidance about choosing the same option for all I&C properties with an AQ less than 732,000 kWh and the same option for all I&C properties with an AQ greater than 732,000 kWh are not reflected; and</i> • <i>the rule in the Guidance (paragraph 1.15) that, for Option 2 I&C properties the charge is not subject to a floor and ceiling is not reflected.</i> 	<p>The Guidance explains (see paragraphs 3.7-3.12) that the rules in paragraph 2 do not apply to I&C Option 2 premises. For those premises the RPC Charge is recalculated on a continuous basis and is not subject to a floor or ceiling (see paragraph 1.15 of the Guidance).</p>	<p>The drafting in Special Licence Condition 1 (in contrast to the Guidance) does not distinguish between New Domestic, I&C and Domestic Infill property types. Currently, the charging provisions, including the provisions dealing with adjustments to iGT's RPC charges in paragraph 2(2) of SC1 apply to all property types. In order to reconcile the substance of the Guidance and the drafting in the licence condition, I&C properties to which Option 2 (<i>Continuous Tracking</i>) applies must be carved out of paragraph 2(2) and a new clause inserted to provide for continuous tracking. Similarly, the floor and ceiling provisions in paragraph 2(1) need to be made subject to a carve-out for Option 2 I&C properties. Without these changes, because the licence condition takes precedence, iGTs charging according to I&C Option 2 risk licence breach.</p>