

Gas transporter licensees,  
gas shipper licensees and  
other interested parties

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Date: 14 April 2015

Dear Sir/Madam,

**Statutory consultation on proposed licence modifications to ensure Great Britain's (GB's) compliance with the European Union legislative definition of gas day**

This letter seeks views on our proposals to modify certain licence conditions relating to the definition of "gas day"<sup>1</sup> to align them with the European Union (EU) legislative definition. Further details on the provisions of that EU legislation, the background to it and Ofgem's<sup>2</sup> powers and duties in respect of it, is contained in our open letter dated 28 July 2014 ("July open letter"<sup>3</sup>).

The July open letter consulted on consequential changes to relevant UK law and licence conditions to comply with these EU requirements. This statutory consultation is specifically about the licence modifications we propose to make in respect of these consequential changes.

We consider that these licence modifications are necessary to facilitate the implementation of certain aspects of two EU Network Codes. EU Network Codes are detailed binding EU laws and so take priority over domestic legislation. Two EU Network Codes require a harmonised start time for the "gas day" namely 05:00 GB local time.

Our July open letter consulted on consequential changes to relevant UK law and licence conditions to comply with the above EU requirements. Having considered the responses to the July open letter, we are publishing statutory consultation notices with our proposed modifications to the Standard Licence Conditions ('SLCs') of the Gas Shipper Licence and the Gas Transporters Licence, and the Standard Special Conditions ('SSCs') and Special Conditions of certain Gas Transporter Licences. These proposed licence modifications are set out in full in the statutory consultation notices published alongside this open letter.

In summary our proposed changes are:

- Gas shipper licence: amend the definition of "day" to align with the EU definition of "gas day"; and
- Gas transporter licences: amend the starting time of "Formula Year"/ "formula year" and associated time periods ("Formula Month") in relevant licences to align with the EU definition of "gas day". Where those definitions refer to a 1 April start date, the first affected time period would commence on 1 April 2016.

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<sup>1</sup> The "gas day" is the daily period over which gas transmission system operators work.

<sup>2</sup> The terms "Ofgem", "the Authority", "our" and "we" are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority (the Authority).

<sup>3</sup> Available here on our website: <https://www.ofgem.gov.uk/ofgem-publications/89022/gasdaylicencechangesinformalconsultationopenletterunsignedversion.pdf>.

We consider that these changes are necessary to implement the EU requirement for a harmonised start to the gas day as mandated by the relevant EU Network Codes. We are seeking stakeholders' views on our proposed changes.

## Background

One of the most important pieces of recent EU legislation on European gas and electricity markets is referred to as the Third Package.<sup>4</sup> The Third Package of European energy reforms created a new legal framework to promote cross-border trade, in response to the European Commission's inquiry into competition in gas and electricity markets published in January 2007.<sup>5</sup> The inquiry found that there was insufficient integration between Member States' markets and highlighted a number of issues. These included the fact that insufficient or unavailable cross-border transmission capacity and different market designs were hampering integration.

In order to rectify this, a number of legally binding EU Network Codes are being established. These EU Network Codes are designed to promote the creation of liquid markets, the efficient use of cross-border transmission capacity and the integration between Member States' gas and electricity markets. On the gas side, one part of facilitating these objectives is to define a common start time and end time for the gas day across Member States. The relevant EU legislation is contained in the following two EU Network Codes:

1. Capacity Allocation Mechanisms in Gas Transmission Systems<sup>6</sup> (CAM) was published in the Official Journal of the European Union (OJEU) on 15 October 2013 and applies from 1 November 2015. This EU legislation applies to interconnection points<sup>7</sup> and defines the "gas day" as *"the period from 5:00 to 5:00 UTC<sup>8</sup> the following day for winter time and from 4:00 to 4:00 UTC the following day when daylight saving is applied<sup>9</sup>".*
2. The Gas Balancing of Transmission Networks<sup>10</sup> (BAL) was published in the OJEU on 27 March 2014 and applies from 1 October 2015. BAL also defines the gas day as from 5:00 to 5:00 UTC in winter and 4:00 to 4:00 UTC during daylight saving time by applying the definitions contained in Article 3 of CAM. BAL applies to balancing zones, which includes the downstream sector.

These EU legislative requirements take priority over existing GB domestic legislation and associated regulations and codes. Therefore, in order to comply with CAM and BAL, GB's gas day at interconnection points and downstream must change to that defined in CAM. Implementing this change requires GB's legal and regulatory framework and industry processes to be modified.

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<sup>4</sup> The term "Third Package" refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('Electricity Directive'); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ('Electricity Regulation'); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ('Gas Directive'); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Gas Regulation'); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

<sup>5</sup> <http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>.

<sup>6</sup> Commission Regulation (EU) No 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:273:0005:0017:EN:PDF>.

<sup>7</sup> A physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users.

<sup>8</sup> Coordinated Universal Time.

<sup>9</sup> CAM Article 3(7).

<sup>10</sup> Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_091\\_R\\_0015\\_01&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_091_R_0015_01&from=EN).

As GB's National Regulatory Authority we have a duty to comply with and implement relevant binding EU Regulations that stem from the Third Package, including CAM and BAL.

In the July open letter, we consulted on the proposals for modifying relevant GB legislation and licence conditions to ensure GB's compliance with the EU legislative definition of "gas day". Since then, we have made amendments to a Statutory Instrument, the Gas (Calculation of Thermal Energy) Regulations 1996, so that its definition of the "gas day" aligns with that in the EU legislation.<sup>11</sup> On 23 March 2015, the Secretary of State consented to the making of these changes and the amending legislation will come into force on 1 October 2015.<sup>12</sup>

## Overview of consultation responses and our views

We received seven non-confidential responses to our July open letter. These are available on our website.<sup>13</sup> Set out below are summaries of the suggestions and comments we received.

In addition to responding to the consultation questions, several respondents gave their views on the wider EU policy of the gas day change and its potential impact on the GB wholesale gas market. Upstream operators are not legally bound to comply with the EU Network Codes and concerns were expressed that they may not change the current start time of their gas day from 6:00 to 5:00, as downstream will, and about the potential impact of that on the GB downstream sector.

We note that some upstream operators are also working to align their gas day times to those in the EU legislation. However, we understand that not all upstream operators have committed to do this. We acknowledge the concerns of some shippers that the industry could face increased costs because of the possible misalignment between the upstream and downstream gas days and we support DECC's work with industry to find a solution to manage this.<sup>14</sup> We strongly encourage all parts of the industry, and particularly shippers involved in transactions at the beach, to cooperate and work together so that a solution that minimises costs for consumers is put in place before 1 October 2015.

This statutory consultation is about the specific wording of the licence modifications that we are proposing to give effect to the binding EU legal requirements contained in CAM and BAL. It is not about the underlying policy that was discussed and negotiated at EU level, which resulted in the provisions contained in CAM and BAL. In this letter we have therefore only referenced those comments that were received in response to the July open letter that concerned the wording of the proposed licence modifications and Letters of Direction.

All respondents to the July open letter agreed that our proposals were necessary for compliance with EU legislation. Where we proposed to make no changes, respondents agreed with us. No respondent identified additional changes necessary to ensure compliance with CAM and BAL although one respondent proposed alternative wording, as discussed in more detail below.

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<sup>11</sup> As per Annex 1 in our July consultation, <https://www.ofgem.gov.uk/publications-and-updates/consultation-modification-legislation-and-licences-comply-eu-legislative-definition-gas-day>.

<sup>12</sup> Statutory Instrument 2015 No. 953, The Gas (Calculation of Thermal Energy) (Amendment) Regulations 2015, [http://www.legislation.gov.uk/ukxi/2015/953/pdfs/ukxi\\_20150953\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/953/pdfs/ukxi_20150953_en.pdf).

<sup>13</sup> <https://www.ofgem.gov.uk/publications-and-updates/consultation-modification-legislation-and-licences-comply-eu-legislative-definition-gas-day>.

<sup>14</sup> Shippers involved in trading at beach should contact Louise Clark at DECC ([gas.day@decc.gsi.gov.uk](mailto:gas.day@decc.gsi.gov.uk)) to understand and participate to the implementation of a solution that will minimise shippers' costs due to any misalignment of gas days between upstream and downstream from 1 October 2015.

## Letters of Direction<sup>15</sup>

One respondent, agreeing with our proposed changes to the Letters of Direction, also suggested that we update at the same time our logo in the Directions and the recipients of the Directions. We agree that this is a good opportunity for these additional housekeeping changes to be made and we are minded to send the updated directions this summer.

## Responses to the licence drafting

In our July open letter we provided draft amended licence text for our proposed modifications. We invited comments on the drafting and proposed implementation approach.

All respondents agreed with our proposed licence drafting.

One respondent proposed alternative wording for the time periods in Standard Special Condition A3(1) and Special Condition 1A.4 of the gas transporters licence, which they thought may be more accurate. The respondent suggested that "formula year" should be described as "the period of twelve months commencing from the beginning of the gas day on 1<sup>st</sup> April and ending at the close of the gas day on the following 31<sup>st</sup> March."

We consider that our proposed drafting<sup>16</sup> has the same effect and is more consistent with how the RIIO licence conditions are worded, and are therefore minded to implement the drafting as we proposed in our consultation.

## Interactions with other consultations

One respondent highlighted that Ofgem should not conduct multiple consultations on the same part of the licence. It is correct that we published consultations on separate modifications to the same part of a licence in a short period but these consultations related to different issues:

- In our July open letter we consulted on proposed licence modifications to ensure GB's compliance with the EU legislative definition of gas day; and
- Our later consultation (on 7 August 2014) concerned changes to implement new arrangements for incremental gas transmission capacity.<sup>17</sup> The PARCA licence changes came into effect on 31 January 2015.<sup>18</sup>

Our proposed modifications in both of these consultations may concern the same part of the licence but they are different in substance and so for clarity we considered that they should be consulted on separately so that the different issues could be properly considered and discussed in their right context.

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<sup>15</sup> The Authority issues Letters of Direction ("Directions") pursuant to Regulation 6(a), (b) and (c) of the Gas (Calculation of Thermal Energy) Regulations 1996 ("GB Regulations"). The Directions direct gas transporters on the time, manner and place in which determinations of calorific value ("CV", ie used to calculate the energy that may be released when a known volume of gas is combusted under specified conditions) must be made. CV determinations are used to calculate charges for local distribution zones. Directions are issued for all gas input points onto the gas network and contain references to "6am". These references relate to the current definition of gas day in the GB Regulations.

<sup>16</sup> "Formula Year means a period of twelve months commencing on 1 April. The first such Formula Year (t=1) commenced on 1 April 2013 at 06:00 hours; from 1 April 2016, Formula Years will commence at 05:00 hours;"

<sup>17</sup> Planning and Advanced Reservation of Capacity Agreement (PARCA): <https://www.ofgem.gov.uk/publications-and-updates/consultation-changes-needed-implement-new-arrangements-incremental-gas-transmission-capacity-parcas>.

<sup>18</sup> Decision on Licence changes to implement Planning and Advanced Reservation of Capacity Agreements (PARCA): <https://www.ofgem.gov.uk/ofgem-publications/91770/parcasmodificationdirectionletter.pdf>.

## Next steps

Alongside this letter we have published statutory consultation notices where we propose to modify the SLCs of the Gas Shipper Licence and the Gas Transporters Licence and the SLCs, the SSCs and Special Conditions of certain Gas Transporters Licences.

We welcome comments on the proposed drafting of these modifications. Responses should be received by **15 May 2015**. We prefer electronic responses, sent to [gasday@ofgem.gov.uk](mailto:gasday@ofgem.gov.uk) but alternatively please post them to:

Victoria Volossov  
Ofgem  
9 Millbank  
London  
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Unless marked confidential, all responses will be published on our website, [www.ofgem.gov.uk](http://www.ofgem.gov.uk). You can ask us to keep your response confidential. We will respect this request, subject to any obligations to disclose information, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

If you would like your response to remain confidential please mark it clearly and restrict all confidential content to an annex. Please include the reasons for confidentiality.

After considering your views, we may issue directions to modify relevant licences. If we proceed with the modifications, we expect these to be published so that the licence changes can take effect on 1 October 2015. Licence holders, trade bodies representing licence holders and Citizen Advice and/or Citizen Advice Scotland will have 20 working days (from the first day after our decision is published) to decide whether to appeal our licence changes to the Competition and Markets Authority (CMA). Subject to appeal, the licence changes will take effect on 1 October 2015.

Yours faithfully,

(electronic version thus unsigned)

**Frances Warburton**  
**Partner, Wholesale Markets**