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FAO: Frances Warburton
Wholesale Markets

15 May 2015

Dear Sirs

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

We refer to your letter dated 14 April 2015, which seeks views on Ofgem's proposals to modify certain licence conditions relating to the definition of "gas day" to align them with the European Union (EU) legislative definition (the "Modifications").

We note your reference to the fact that not all upstream operators will align their gas day to the EU definition of the "gas day". We understand that, in fact, a majority of upstream operators do not intend to change their gas days which will remain 0600 hours to 0600 hours GMT and that there will be a misalignment between the upstream and downstream systems at all such affected National Transmission System ("NTS") Entry Points. We also understand that National Grid Gas plc ("National Grid") will not offer the sort of intra system operational arrangements that are commonly used in Europe to manage differences between connected systems, such as operational balancing arrangements or line pack flexibility services.

The absence of any upstream or upstream to National Grid solution ("Upstream/Downstream Solution") has left the shippers at the affected NTS Entry Point sub terminals ("Affected Terminals") to try to find a solution to manage the misalignment and, as you note, an attempt to do so is being made through a DECC/shipper working group. We are active participants in such working group and are accordingly familiar with the issues raised as a consequence of the misalignment.

Irrespective of whether the DECC/shippers working group can find a solution to mitigate the misalignment problem, the lack of an Upstream/Downstream Solution means that shippers using the Affected Terminals will only ever receive information as to their predicted and actual daily flows of gas through the Affected Terminals and into the NTS on an 0600 hours to 0600 hours GMT basis. Accordingly they will never have the right information to enable them to balance their NTS positions on a 0500 hours to 0500 hours GMT basis. Without amendments to the Uniform Network Code, they will on a regular, systematic basis incur imbalance charges to National Grid for imbalances arising solely from the difference between the flow of gas in the period 0500 hours to 0500 hours and 0600 hours and 0600 hours on each day rather than differences between their scheduled and actual physical flows of gas. Shippers will be unable to mitigate such charges as they will only find out their allocations as result of 0500:0500/0600:0600 flow differences after the day.

One of the key issues that the DECC/shippers working group is trying to resolve is to amend the claims validation arrangements for the Affected Terminals so that, if the aggregate 0500:0500 hours flow exceed the aggregate 0600:0600 hours flow, such excess gas is allocated to shippers rather than being lost to the NTS as unallocated gas as would be the case under the existing arrangements. Whilst preventing major losses of gas to the NTS, it should be noted that such random, after the day over allocation of gas to shippers will mean that shippers at Affected Terminals will no longer be able to accurately book NTS entry capacity and may incur unexpected overrun charges as a result.

We note your position that the statutory consultation is only about the specific wording of the licence modifications around the definition of "gas day". However we do not believe that the Modifications can or should be considered in isolation either from their effect on other parts of the licences nor from the fact that misalignment of gas day at the beach without an Upstream/Downstream Solution means that the purposes and many of the key principles set out in Regulation (EC) No 715/2009 of the European Parliament on the conditions for access to the natural gas transmission networks (the "2009 Regulation") and Commission Regulation (EU) 312/2014 establishing a Network Code on Gas Balancing of Transmission Networks ("Balancing Network Code") (the 2009 Regulation and the Balancing Network Code being together the "Regulations") cannot be met.

Effect of proposed changes on Standard Licence Conditions (SLCs) of the Gas Shippers Licence

SLC 3.3 states:

"The licensee shall not knowingly or recklessly act in a manner likely to give a false impression to a relevant transporter as to the amount of gas to be delivered by the licensee on a particular day to that transporter's pipeline system..."

As noted above, shippers using Affected Terminals after 1st October 2015 will never be in position to provide National Grid with accurate information on their intended flows into the NTS on a 0500 hours to 0500 hours gas day basis as they will only ever receive 0600 hours to 0600 hours information from an Affected Terminal. They will therefore unfortunately always be giving National Grid a “false impression as to the amount of gas to be delivered by [them] on a particular day” and be consistently in breach of SLC 3.3.

An amendment to, or waiver of, SLC 3.3, therefore needs to be made at the same time of the Modifications if OFGEM is to avoid putting shippers at Affected Terminals in breach of their licences.

Implementation of gas day changes without an Upstream/Downstream Solution

The effect of changing the gas day in the absence of an Upstream/Downstream Solution is that neither National Grid nor shippers using Affected Terminals will be able to comply with the purposes and many of the key principles set out in the Regulations.

The Regulations require, inter alia, the following:

1. “This Regulation aims at (a) setting **non discriminatory** rules for access conditions to natural gas transmission systems...” (Article 1 2009 Regulation)
2. “Market based balancing rules (that) **financially incentivise network users to balance** their balancing portfolios via **cost reflective imbalance charges**” (Recital (4) Balancing Network Code)
3. “Balancing Rules established in accordance with this Regulation shall **reflect genuine system needs**and shall provide **incentives for network users to balance** their balancing portfolios efficiently” (Article 21 2009 Regulation and Article 4.2 Balancing Network Code)
4. “[Balancing Rules] shall **avoid cross subsidisation** between network users and shall not hamper the entry of new market entrants” (Article 21 2009 Regulation)
5. “**The network users shall be responsible to balance their balancing portfolios** in order to minimise the need for transmission system operators to undertake balancing actions...” (Article 4.1 Balancing Network Code)

Shippers at Affected Terminals will pay unearned, immitigable imbalance charges arising from the difference between the flow of gas in the period 0500 hours to 0500 hours and 0600 hours and 0600 hours to National Grid on a likely daily basis. Such imbalance charges will not be related to genuine system needs nor to shippers’ intended flows. Shippers will therefore not be able to comply in full with the responsibility to balance their balancing portfolios nor will the imbalance charges financially incentivise them to balance or be cost reflective.

Shippers at non Affected Terminals will not bear these “synthetic” imbalance charges resulting in shippers at Affected Terminals being discriminated against.

The monies raised by National Grid from the "synthetic" imbalance charges will, under the current version of the Uniform Network Code, be returned to all shippers entering and exiting gas to and from the NTS through the balancing neutrality charge regime, not just to shippers at the Affected Terminals. There will therefore be cross subsidisation by the shippers at the Affected Terminals.

Conclusion

We consider that the Modifications cannot be made in isolation and in the absence of mitigation in respect of the financial penalties that will be incurred by shippers using the Affected Terminals which are not only undesirable for such shippers but which result in the purpose and many of the key principles set out in the Regulations being unachievable.

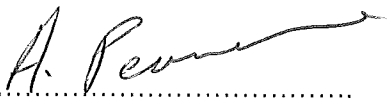
Since there are no current plans to change the metering at and upstream of the Affected Terminals and that intra terminal/ National Grid operational arrangements are likely not feasible by 1st October 2015, we need an interim solution that relieves shippers at the Affected Terminals from "synthetic" imbalance charges and therefore restores the correct incentives to balance and avoids cross subsidisation. National Grid is key to reaching such a solution in time for 1st October 2015 and we ask that you encourage National Grid to participate actively in achieving such a solution.

In order to ensure proper functioning of the NTS and the UK wholesale gas market in compliance with the purpose and principles of the Regulations, any such solution need only apply at the Affected Terminals and is not needed at any of the cross border interconnection points. It should therefore have no effect of broader EU market integration.

We would be happy to discuss this matter further with you and ask you to use as our contact: Andrew Pearce (020 7948 4027; PearceAR@bp.com).

We confirm that we do not require this response to be treated as confidential.

Yours faithfully



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For and on behalf of BP Gas Marketing Limited