

Gas transporter licensees,  
gas shipper licensees and  
other interested parties

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Date: 12 June 2015

Dear Sir/Madam,

**Licence modifications to gas licences under section 23 of the Gas Act 1986 to ensure Great Britain's (GB's) compliance with the European Union legislative definition of gas day**

We are notifying you of our decision 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 contained in the EU Network Codes<sup>2</sup>. Further detail on the provisions of that EU legislation, the background to it and Ofgem's<sup>3</sup> powers and duties in respect of it, is contained in our open letter dated 28 July 2014 ('July open letter'<sup>4</sup>) and our statutory consultation letter dated 14 April 2015 ('statutory consultation'<sup>5</sup>).

The July open letter consulted on consequential changes to relevant UK law and licence conditions to comply with these EU requirements. In the statutory consultation we asked for your views specifically on the licence modifications we proposed to make in respect of these consequential changes.

Having taken account of the responses duly made to our statutory consultation, we are modifying the Standard Licence Conditions ('SLCs') of the Gas Shipper Licence and the Gas Transporter Licence and the Standard Special Conditions ('SSCs') and Special Conditions of certain Gas Transporter Licences. The detail of these licence modifications are set out in full in the modification notices published alongside this decision letter.

In summary, the 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 EU Network Codes are a number of legally binding EU Regulations made under the package of EU legislation on European gas and electricity markets that is referred to as the Third Package. Further details on the specific legislation are contained in the documents referred to in footnote 4 and 5 below.

<sup>3</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>4</sup> Available here on our website: <https://www.ofgem.gov.uk/ofgem-publications/89022/gasdaylicencechangesinformalconsultationopenletterunsignedversion.pdf>.

<sup>5</sup> <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-licence-modifications-ensure-gb-compliance-eu-legislative-definition-gas-day>.

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.

## Overview of consultation responses and our views

We received five non-confidential responses to our statutory consultation. These are available on our website.<sup>6</sup>

None of the respondents objected to the drafting of our proposed licence amendments. However, two shippers raised concerns that complying with the new definition of 'gas day' as per the proposed amended SLC 1(1) of the shipper licence would result in them being in breach of SLC 3(3) of the same licence. One of the two shippers also suggests that an amendment to, or a waiver of, SLC 3(3) would need to be made at the same time as the modification of SLC 1(1).

As correctly noted by some respondents, SLC 3(3) sets out that: *"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 pipe-line system or as to the amount of gas to be comprised in its offtakes therefrom on that day"*.

SLC 3 is a key condition in the shipper licence. Its aim is to ensure that the licensee acts in a *"reasonable and prudent manner"* when shipping gas through the transporter's pipeline system in order to safeguard the *"safe and efficient operation"*, *"the safe, economic and efficient balancing"* of the pipeline system by the relevant transporter and *"the due functioning provided by the Network Code"*. Ultimately it is important that shippers continue to comply with this condition. A waiver of SLC 3(3) or even a loosening of its obligation would remove the important protection that it seeks to provide to network safety and/or balancing.

We do, however, acknowledge that due to the potential misalignment of gas days between upstream and downstream, shippers will have more difficulty in forecasting their deliveries to provide nominations to National Grid for those entry points on the National Transmission System. However, we also believe that shippers should still take steps to ensure that these nominations are as correct as possible for the amended gas day, in accordance with SLC 3. SLC 3(4), sets out that, when introducing gas into the network, *"the licensee will use its reasonable endeavours to make arrangements [...] for the purpose of securing the provision to the relevant transporter of prompt and accurate information in respect of the licensee's deliveries of gas to the transporter's pipe-line system at the delivery point in question"*.

As stated in our Enforcement Guidelines<sup>7</sup>, in assessing compliance with any licence condition, Ofgem always takes into account the context in which the relevant action in respect of the licence obligation is taking place. In the case of SLC 3 of the shipper licence, we would look at the specific context in which shippers are delivering into the network from any terminal that is operating a gas day based on 6am-6am times and any difficulties that this produces in terms of the accuracy of the data available to the shipper.

We continue to encourage shippers to find alternative ways of forecasting their deliveries from upstream into the network in line with the new times of the amended gas day, in accordance with their licence obligations.

For all the above reasons, we do not consider that a waiver or loosening of SLC 3(3) is necessary nor appropriate at this time.

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<sup>6</sup> <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-licence-modifications-ensure-gb-compliance-eu-legislative-definition-gas-day>

<sup>7</sup> Our Enforcement Guidelines can be found here: <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines-decision-document>

## **Our decision**

Having carefully considered the responses to our statutory consultation, we have decided to proceed with the modifications that are set out in our decision notices referred to below. These modifications will take effect from 1 October 2015 to align with the implementation date of the Gas Balancing of Transmission Networks (BAL).

Alongside this letter we have published notices setting out the modifications we are making to the SLCs of the Gas Shipper Licence and the Gas Transporter Licence and the SSCs and Special Conditions of certain Gas Transporter Licences.

This letter and the modifications constitute our publication of our decision and the modification in accordance with the terms of section 23(7) of the Gas Act 1986.

## **Next steps**

Subject to any appeal of our decision to modify the licences mentioned in this letter, the licence changes will take effect on 1 October 2015.

If you have any questions regarding the content of this letter, please contact Dora Ianora by email at [gasday@ofgem.gov.uk](mailto:gasday@ofgem.gov.uk) or on 0207 901 1854.

Yours faithfully,

**Paul Branston**  
**Associate Partner, Gas Networks**