

To all holders of a Gas Transporters Licence:

NOTICE UNDER SECTION 23(2) OF THE GAS ACT 1986

The Gas and Electricity Markets Authority ("the Authority") hereby gives notice pursuant to section 23(2) of the Gas Act 1986 ("the Act") as follows:

1. The Authority proposes to modify all gas transporter licences granted or treated as granted under section 7 of the Act by amending the following Standard Licence Conditions (SLC):
 - (a) SLC 30: Regulatory Accounts
 - (b) SLC 1: Definitions
 - (c) SLC 30A: Change of Financial Year; and
 - (d) SLC 44: Availability of Resources.
2. The Authority's reasons for proposing to make these licence modifications are:
 - (a) to ensure that the requirements for the preparation, submission and availability of accounts by independent gas transporters¹ are consistent with the requirements of the Gas Directive, Directive 2009/73/EC; and
 - (b) to remove the requirement for independent gas transporters to prepare regulatory accounts for periods corresponding to the 'Formula Years' referred to in gas distribution price controls. This is because independent gas transporters are not directly subject to those price controls.
3. The effects of the proposed modifications would be:
 - a) to remove the requirement for independent gas transporters to prepare, and have audited separate regulatory accounts, including current cost accounts; and
 - b) to require each independent gas transporter to:
 - (i) produce annual accounts in accordance with the requirements of the Companies Act 2006, as amended, that are applicable to limited companies, even if it is not itself such a company;
 - (ii) keep a copy of the accounts referred to in subparagraph (i) at the disposal of the public at its principal place of business if it is not required to file the accounts at Companies House;
 - (iii) keep separate internal accounts for different segments of its business (if applicable); and
 - (iv) arrange, where appropriate, for agreed upon audit procedures to be carried out by an appropriate auditor in relation to the obligation on the licensee to avoid discrimination and cross-subsidies.
4. A copy of the proposed modifications and other documents referred to in this Notice have been published alongside this Notice and are available on the Ofgem website (www.ofgem.gov.uk).

¹ Independent Gas Transporters develop, operate and maintain local gas transportation networks embedded in the larger networks operated by incumbent gas distribution network operators.

5. Any representations with respect to the proposed licence modifications must be made on or before 17 July 2015 and addressed to: Paul Darby, Regulatory Finance Team, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to paul.darby@ofgem.gov.uk.
6. All responses will normally be published on Ofgem's website. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.
7. If the Authority decides to make the proposed modifications they will take effect not less than 56 days after the Authority's decision is published.



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Ian Rowson
Associate Partner, Regulatory Finance

Duly authorised on behalf of the
Gas and Electricity Markets Authority

5 June 2015

Annex 1 to the Authority's Notice under section 23(2) of the Gas Act 1986 dated 5 June 2015 – Proposed modification of Standard Condition 30: Regulatory Accounts

The proposed modification is to delete the text shown crossed out below and to insert the text shown double underlined below.

Condition 30: Regulatory Accounts

- ~~1. The following paragraphs of this condition apply for the purpose of ensuring that the licensee (and any affiliate or related undertaking) maintains accounting and reporting arrangements which enable regulatory accounts to be prepared for the consolidated transportation business and showing the financial affairs of the consolidated transportation business.~~

- ~~2. The licensee shall:~~
 - ~~(a) keep or cause to be kept for the period referred to in section 222(5)(b) of the Companies Act 1985 and in the manner referred to in that section such accounting records in respect of the consolidated transportation business so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the consolidated transportation business are separately identifiable in the accounting records of the licensee (and any affiliate or related undertaking) from those of any other business of the licensee;~~
 - ~~(b) prepare on a consistent basis from such accounting records in respect of:
 - ~~(i) each financial year, accounting statements comprising a profit and loss account, a statement of total recognised gains and losses, a balance sheet, and a cash flow statement, together with notes thereto, and showing separately in respect of the consolidated transportation business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has either:
 - ~~(aa) charged from or to any other business together with a description of the basis of that charge; or~~
 - ~~(bb) determined by apportionment or allocation between the consolidated transportation business and any other business together with a description of the basis of the apportionment or allocation; and~~~~
 - ~~(ii) the first six months of each financial year, an interim profit and loss account; and~~~~

~~(iii) each financial year, sufficient accounting information in respect of the consolidated transportation business to allow the preparation of consolidated accounting statements of the licensee or, where applicable, the ultimate controller. Such information shall include a profit and loss account, a statement of total recognised gains and losses, a balance sheet, and a cash flow statement together with notes thereto;~~

~~(c) procure, in respect of the accounting statements prepared in accordance with this condition in respect of each financial year, a report by the auditors and addressed to the Authority stating whether in their opinion those statements have been properly prepared in accordance with this condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the consolidated transportation business to which the statements relate. The audit shall verify that the licensee has complied with the obligation to avoid discrimination and cross subsidies that is specified in Article 31 of the Directive and is imposed on the licensee by Condition 41 of this licence; and~~

~~(d) deliver to the Authority a copy of the account referred to in sub-paragraph (b)(ii), the auditors' report referred to in sub-paragraph (c), the accounting statements referred to in sub-paragraph (b)(i) and the accounting information referred to in sub-paragraph (b)(iii), as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii) and six months after the end of the financial year to which they relate in the case of the accounting statements, auditors' report and accounting information referred to in sub-paragraphs (b)(i), (b)(iii) and (c).~~

~~2A. The licensee shall, in its internal accounting, keep separate accounts for each of the licensee's transmission, distribution, LNG and storage activities (so far as relevant) as though the activities were carried out by separate undertakings.~~

~~2B. The licensee shall keep internal accounts which may be consolidated for other gas activities not relating to transmission, distribution, LNG and storage.~~

~~2C. Where appropriate, the licensee shall keep internal consolidated accounts for other, non-gas activities. The accounts shall include a balance sheet and a profit and loss account for each activity.~~

~~2D. The annual accounts shall indicate in notes any transaction above such size directed by the Authority conducted with related undertakings.~~

~~3. Unless the Authority so specifies in directions issued for the purposes of this condition, or with the Authority's prior written approval, the licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge or apportionment or allocation referred to in sub-paragraph 2(b)(i) from those applied in respect of the previous financial year.~~

~~4. Where, in relation to the accounting statements in respect of a financial year, the licensee has changed such bases of charge or apportionment or allocation from those adopted for the immediately preceding financial year, the licensee shall, if so directed in directions issued by the Authority, in addition to preparing accounting statements on those bases which it has adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.~~

~~4A. The licensee shall specify in its internal accounting the rules for the allocation of assets and liabilities, expenditure and income, as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 1. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.~~

~~5. Accounting statements and information in respect of a financial year prepared under sub-paragraph 2(b)(i) and (b)(iii) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this condition:~~

~~(a) have the same content and format as the statutory accounts of the licensee prepared under section 226 and, where appropriate, section 227 of the Companies Act 1985 and conform to the best commercial accounting practices including all relevant accounting standards issued or adopted by the Accounting Standards Board currently in force;~~

~~(b) state the accounting policies adopted; and~~

~~(c) with the exception of the part of such statements and information which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively, be published with the statutory accounts of the licensee.~~

6. Unless the accounting statements and information prepared under sub-paragraph 2(b)(i) and (b)(iii) are prepared on the current cost basis as provided by the alternative accounting rules, the licensee shall, unless otherwise agreed by the Authority, in addition to preparing those accounting statements under that paragraph, prepare accounting statements for the consolidated transportation business covering the same period, which shall comprise and show separately:

(a) a profit and loss account, statement of total recognised gains and losses, a balance sheet, and a cash flow statement, together with notes thereto, which shall:

(i) include in respect of current cost assets amounts determined on the current cost basis as provided by the alternative accounting rules; and

(ii) show or disclose the information and other matters required by the alternative accounting rules to be shown or disclosed in accounts where the amounts included in respect of assets covered by any items shown in those accounts have been determined on any basis mentioned in paragraph 31 of section C of Part II of Schedule 4 to the Companies Act 1985;

(b) in respect of the consolidated transportation business the adjusted amount of any such provision for depreciation as is referred to in paragraph 32(2) of section C of Part II of Schedule 4 to the Companies Act 1985 and the items shown in the profit and loss account of the consolidated transportation business for the relevant period which are affected by the determination of amounts on the current cost basis as provided by the alternative accounting rules, including the profit (or loss) before taxation; and

(c) such other current cost information as is referred to in the handbook as the Authority may reasonably require;

and shall deliver the same, together with an auditors' report prepared in relation to the current cost basis accounting statements in the form referred to in sub-paragraph 2(c), to the Authority within the time limit referred to in sub-paragraph 2(d), and shall (with the exception of the part of such statements and information which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively) publish the same with the statutory accounts of the licensee.

7. References in this condition to costs or liabilities of, or reasonably attributable to, the consolidated transportation business shall be construed as excluding taxation and capital liabilities which do not relate principally to the consolidated

~~transportation business, and interest thereon; and references to any profit and loss account shall be construed accordingly.~~

8. ~~Without prejudice to paragraph 5 of the terms of this licence, references in this condition to sections of the Companies Act 1985 are references to those provisions as amended, substituted or inserted by the relevant provisions of the Companies Act 1989 and if such provisions of the Companies Act 1989 are not in force at the date of grant of this licence shall be construed as if such provisions were in force at such date.~~

9. ~~For the purposes of paragraph 6:~~

~~"alternative accounting rules" means the rules set out in section C of Part II of Schedule 4 to the Companies Act 1985.~~

~~"current cost assets" means assets of any description mentioned in paragraph 31 of section C of Part II of Schedule 4 to the Companies Act 1985.~~

~~"the handbook" means the handbook issued by the Accounting Standards Committee of the Consultative Committee of Accounting Bodies (CCAB Limited) or any successor body entitled "Accounting for the effects of changing prices: a handbook" in its current edition for the time being or in the event that no such handbook shall be in issue such guidance or publication as may be issued in replacement or substitution therefore.~~

10. ~~For the purposes of this condition:~~

~~"consolidated transportation business" means the consolidation, for regulatory accounting purposes, of the businesses referred to in the definition of "transportation business" as defined in standard condition 1 (Definitions and Interpretation).~~

~~"regulatory accounts" means the accounts required to be prepared by the licensee pursuant to this condition.~~

1. The provisions of this condition have effect from 1 August 2016.

Preparation and availability of accounts

2. The licensee shall draw up, submit to audit and publish its annual accounts in accordance with any obligations to which it is subject under the Companies Act 2006, as amended.

3. To the extent that the licensee is not subject to an obligation to draw up and submit to audit annual accounts under the Companies Act 2006, as amended, the licensee shall draw up and submit to audit annual accounts as if it were a limited company within the meaning of sections 1 and 3 of the Companies Act 2006.

4. The licensee shall keep a copy of its annual accounts at the disposal of the public at its principal place of business if it is not required to file those accounts at Companies House under the Companies Act 2006, as amended.

Internal accounting

5. The licensee, in its internal accounting, shall:

(a) keep separate accounts for any gas distribution, transmission and storage activities it carries out, as if such activities were carried out by separate undertakings, to avoid discrimination, cross-subsidisation and the distortion of competition; and

(b) keep accounts (which may be consolidated) for other activities not relating to gas distribution, transmission and storage, in each case, sufficient to allow for the preparation of a balance sheet and a profit and loss account for the activity or set of activities concerned.

Audit requirement

6. Subject to paragraph 8, the licensee must, at its own expense, enter into a contract of appointment with an appropriate auditor for the completion of agreed upon procedures in relation to the prohibition of cross-subsidies and discrimination contained in paragraph 3 of Article 31 of Directive 2009/73/EC of the European Parliament and the European Council of 13 July 2009 ("the directive").

7. Subject to paragraph 8, the contract of appointment referred to in paragraph 6 must provide for the appropriate auditor to:

- (a) carry out agreed upon procedures in relation to each financial year that begins after the date specified in paragraph 1; and
- (b) address a report to the Authority by 31 July following the end of each such financial year which:
- (i) states that they have completed the agreed upon procedures in a manner consistent with relevant auditing standards; and
- (ii) sets out their findings in respect of the financial year under report.

8. The licensee need not enter into the contract of appointment referred to in paragraph 6 in respect of a particular financial year if:

- (a) during the whole of the financial year the licensee does not carry out any gas transmission or storage activities; and
- (b) by 31 July following the end of the financial year, the licensee submits to the Authority a certificate that has been signed by a director of the licensee and includes the following wording:

“During the financial year beginning on 1 April [] the licensee has not carried out any gas transmission or storage activities.”

9. If the Authority is satisfied, with respect to a particular financial year, either:

- (a) that the report referred to in paragraph 7(b) demonstrates that the licensee has complied with the obligation to avoid discrimination and cross-subsidies that is referred to in paragraph 3 of Article 31 of the directive; or
- (b) that the circumstances set out in paragraph 8 apply,

then the audit requirement referred to in paragraph 4 of Article 31 of the directive will be deemed to have been met.

Interpretation

10. In this condition:

“agreed upon procedures”

means procedures from time to time agreed between the Authority, the appropriate auditor and the licensee for the purpose of enabling the appropriate auditor to review and report to the Authority on matters relating to the licensee’s compliance with the obligation

to avoid discrimination and cross-
subsidies set out in Article 31 of the
directive.

“appropriate auditor”

means:

(a) in the case of a licensee that is a
company within the meaning of
section 1 of the Companies Act
2006 a person appointed as
auditor under Chapter 2 of Part 16
of that Act;

(b) in the case of any other licensee
that is required by the law of a
country or territory within the
European Economic Area to
appoint an auditor under
provisions analogous to those of
Chapter 2 of Part 16 of the
Companies Act 2006, a
person so appointed; and

(c) in any other case a person who is
eligible for appointment as a
company auditor under Part 42 of
the Companies Act 2006.

“the directive”

has the meaning given in paragraph 5 of
this condition.

Annex 2 to the Authority’s Notice under section 23(2) of the Gas Act 1986 dated 5 June 2015 – Proposed modification of Standard Condition 1: Definitions and Interpretation

Condition 1: Definitions and interpretation

The proposed modification is to delete the text shown crossed out below.

~~“alternative accounting rules”~~ ~~for the purposes of standard condition 30 (Regulatory Accounts) only, has the meaning given in that condition;~~

~~“consolidated transportation business”~~ ~~for the purposes of standard condition 30 (Regulatory Accounts) only, has the meaning given in that condition;~~

~~“current cost assets”~~ ~~for the purposes of standard condition 30 (Regulatory Accounts) only, has the meaning given in that condition;~~

“financial year” means, subject to standard condition 30A (Change of Financial Year) (where applicable), a period of 12 months beginning on 1st April of each year and ending on 31st March of the following calendar year;

~~“regulatory accounts”~~ ~~for the purposes of standard condition 30 (Regulatory Accounts) only, has the meaning given in that condition;~~

~~“the handbook”~~ ~~for the purposes of standard condition 30 (Regulatory Accounts)~~

only, has the meaning given in that
condition;

Annex 3 to the Authority's Notice under section 23(2) of the Gas Act 1986 dated 5 June 2015 – Proposed modification of Standard Condition 30A: Change of Financial Year

The proposed modification is to delete the text shown crossed out below and to insert the text shown double underlined below.

Condition 30A: Change of Financial Year

1. ~~The definition of "financial year" in standard condition 1 (Definitions and Interpretation) shall, for the purpose only of the statutory accounts of the licensee, cease to apply to the licensee from the date the licensee sends a notice to the Authority for that purpose.~~

2. ~~Such notice:~~

~~(a) shall specify the date from which, for the purpose set out at paragraph 1, the current and subsequent financial years of the licensee shall run; and~~

~~(b) shall continue in effect until revoked by the licensee issuing a further notice.~~

3. ~~While the notice continues in effect the licensee shall procure the preparation of and shall deliver to the Authority audited group accounts for its group of companies for each financial year.~~

4. ~~Audited group accounts produced in accordance with paragraph 3:~~

~~(a) shall comprise consolidated group accounts in respect of the group of companies;~~

~~(b) shall, save insofar as is necessary to reflect a different financial year, have the same form and content as the statutory accounts of the licensee;~~

~~(c) shall be accompanied by a report by the auditors and addressed to the Authority stating whether in their opinion the audited group accounts have been properly prepared in accordance with this condition and give a true and fair view of the state of affairs of the group of companies and of its profits or losses, total recognised gains or losses and cash flows during the financial year;~~

~~(d) may, with the prior written consent of the Authority, omit or provide in a different form, specified in the consent, such information as may be specified in the consent; and~~

~~(e) shall clearly disclose any differences between the accounting policies underlying the preparation of the statutory accounts of the licensee and the accounting policies underlying the preparation of the audited group accounts.~~

~~5. The licensee may, for the purpose only of its statutory accounts, change its financial year from that previously notified by sending to the Authority a new notice pursuant to paragraph 1. Where the licensee sends the Authority a new notice the previous notice shall be revoked, as provided by sub-paragraph 2(b). The licensee's financial year-end will change with effect from the date specified in the new notice. The new notice shall specify the licensee's new financial year-end.~~

~~6. No provisions of this condition shall apply to the financial year of the licensee as defined in standard condition 1 (Definitions and Interpretation) for the purpose of accounts produced in compliance with standard condition 30 (Regulatory Accounts). No provisions of this condition shall affect the licensee's obligations in respect of payment of licence fees under standard condition 3 (Payments by the Licensee to the Authority).~~

[Not Used]

Annex 4 to the Authority's Notice under section 23(2) of the Gas Act 1986 dated 5 June 2015 - Proposed modification of Standard Condition 44: Availability of Resources

The proposed modification is to delete the text shown crossed out below at paragraph 3:

Condition 44: Availability of Resources

Statement of factors and report by auditors in relation to financial resources certificate

3. The licensee must ensure that the certificate given to the Authority under paragraph 2 is accompanied by:
 - (a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:
 - (i) the main financial resources and financial facilities available to the licensee; and
 - (ii) the most recent cash flow statement prepared for the licensee;
 - and
 - (b) a report prepared by its auditors and addressed to the Authority which states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under ~~Standard Condition A30 (Regulatory Accounts)~~ on the licensee's ~~Regulatory Accounts~~.