



Making a positive difference
for energy consumers

All interested parties

Email: NGGD.Separation@ofgem.gov.uk

Date: 3 May 2016

Dear Colleagues

Statutory consultation on proposed new Standard Special Conditions (SSC) and Special Conditions (SC) in National Grid Gas plc (NGG)'s National Transmission System (NTS) gas transporter licence

On 10 November 2015, National Grid plc (NG) announced the commencement of a process for the intended sale of a majority stake in its gas distribution network (GDN) business. At that time, NG stated it intended to commence the sale process in the second half of 2016 and it was likely to be completed in early 2017. This process of sale would consist of two broad stages: stage 1, **hive across** – NG will transfer its gas distribution assets and licence from NGG to a new licensed subsidiary (NewCo) of NG; and stage 2, **share sale** – NG then intends to sell a majority of its shares in NewCo.

This consultation is on the proposed modification to NGG's transmission licence to provide us with the power to maintain certain obligations on NGG in the event that the transfer of assets and licence were to occur. The relevant obligations inserted in the transmission licence would remain dormant unless the Authority:

- consents, pursuant to section 8AA of the Gas Act 1986, to the transfer of the gas transporter licence held by NGG in respect of its distribution networks (and makes appropriate amendments to that licence regarding the relevant obligations); and
- issues a direction stating that the relevant obligations should be in effect.

These proposed changes are merely preparatory, in the event that NG receives the relevant consents¹ required to transfer NGG's gas distribution assets and licence to NewCo. The fact that we are proposing to make these preparatory modifications in no way fetters our discretion in deciding whether it is appropriate to grant such consent and should not be taken as any indication of whether such consent will be granted.

The relevant obligations would ensure NGG remains the Backstop Meter Provider of Last Resort (BMPOLR), an obligation which it currently has through its distribution licence and which requires it to comply with any reasonable request by a relevant GDN to provide, install and maintain a traditional (i.e. not smart) domestic gas meter. The rationale for

¹ The relevant consents being consent to transfer NGG's GDN assets under SSC A27 and gas distribution licence under s8AA of the Gas Act 1986.

BMPOLR, introduced from 1 April 2014, is to improve the provision of metering services, during the transition to smart meters. This is achieved by allowing a GDN that may not have significant metering capability to use the backstop provider, which may benefit from economies of scale.

We have not yet reached a final decision on where the BMPOLR obligation should reside. Separately, as part of a wider consultation we have issued today² in relation to the sale preparations, we are seeking stakeholder views on whether the BMPOLR obligation should reside in NGG's transmission licence (and therefore remain with NGG) or should remain in the distribution licence (and therefore, following the transfer of the distribution business, move from NGG, albeit remaining with NG until the sale). We are aware that NG has consulted on this matter in February 2016³ to seek initial views from its stakeholders on where the obligation should reside. Following its review of the responses, NG considers that the obligation should remain with NGG.

Making the licence modifications proposed in this consultation would give us the flexibility to place the obligation on NGG without any delay or loss of protection if we conclude that it is appropriate following our wider consultation.

- **Consultation question:** Do you consider the proposed modifications to NGG's transmission licence, which would give us the power to maintain the BMPOLR obligations on NGG through its transmission licence, if relevant, are appropriate?

Background

Current licence structure and proposed transfer of assets and licence ahead of the intended sale

NGG holds separate gas transporter licences for its National Transmission System (NTS) business (a transmission licence) and for its four GDNs (a distribution licence). Ahead of the intended sale of its distribution business, NG proposes to transfer the distribution assets and distribution licence from NGG to a new company (NewCo), which would be its subsidiary in the first instance. NGG proposes that its transmission licence would also be amended, subject to the appropriate consultations. NG intends that it would then, at a later date, sell the shares of NewCo to a buyer.

The transfer of the assets, and transfer and modification of the distribution licence to the NewCo require our consents, and the consents of the Secretary of State.

We believe it is important that we give an opportunity to stakeholders to raise any issues arising from the proposed transfer of assets with us ahead of our decision on whether or not to consent. Therefore, today we have also launched a separate consultation for 28 days on issues arising out of the proposed transfer of assets. We explain this further below.

We do have a statutory obligation to consult on the subsequent proposed licence modification and proposed licence transfer and we will be doing this in due course.

² <https://www.ofgem.gov.uk/publications-and-updates/national-grid-sale-gas-distribution-network-business-consultation-regulatory-aspects>

³ <http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=45406>

NG consultation on proposed sale

In February 2016, NG conducted its own three-week stakeholder consultation on its proposed sale. We understand that NG distributed its consultation document to over 350 stakeholders. Including face-to-face discussions, NG received 18 responses to its consultation. Subsequently, NG published a stakeholder Response Document.⁴

NG's proposal, based on its consultation, is that the BMPOLR obligation should remain with NGG. This would require transferring this obligation from its distribution licence to the transmission licence in the event of the transfer of the distribution licence to NewCo. NG's rationale for preferring this option is that it involves the least change to arrangements for other GDNs, suppliers and consumers, and creates parity between each GDN licence.

NG sale of Gas Distribution Network business – consultation on regulatory aspects

As noted above, we are also publishing today a separate consultation document on the issues arising from the intended transfers of assets and licences from NGG to NewCo. In brief, while we consider transfers of assets and licences between subsidiaries in the same group as low risk, we are aware the purpose of these proposed transfers is to facilitate a future sale of a majority share in the business. In the light of this, we need to make sure that:

- relevant obligations are set out either in the distribution licence or in the transmission licence at all times;
- we address stakeholders' concerns on how obligations could be allocated between the transferred (distribution) licence and the retained (transmission) licence;
- the proposed allocation of assets between the transmission and the distribution licensees allows us to maintain the integrity of our price controls; and
- the relative interests of the transmission and distribution consumers are fully protected.

In that consultation document, amongst other questions, we are asking stakeholders what their views are on which entity should have the BMPOLR obligation and, therefore, in which licence the BMPOLR obligation should reside. We will decide on this matter having considered responses from stakeholders. If the responses we receive to this question and our analysis indicate that the BMPOLR obligation should continue to reside with NGG, the modifications to NGG's transmission licence on which we are consulting in this statutory consultation would give us the ability to put in place these obligations on NGG without delay.

Proposed changes to the transmission licence relating to the BMPOLR obligations

The proposed modifications comprise the introduction of new licence conditions with regard to the BMPOLR obligation and treatment of customers when undertaking activities when on their premises in NGG's transmission licence. The conditions themselves are largely replicated from NGG's distribution licence, where the obligations currently reside.

The BMPOLR obligations in NGG's transmission licence would be in effect if (i) the Authority consents, pursuant to section 8AA of the Gas Act 1986, to the transfer of the gas transporter licence held by NGG in respect of its distribution networks to NewCo and (ii) the Authority issues a direction to activate the obligation. We would only issue such a direction after consideration of responses to our question on where this obligation should reside (raised in our consultation on the preparation for NGG's sale of its GDN

⁴ <http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934819>

business, as described above) and if we are satisfied that transferring the BMPOLR obligation into NGG's transmission licence, ie ensuring it remains with NGG, protects the interests of existing and future gas consumers.

We propose that the majority of the BMPOLR conditions are located in the Standard Special Conditions (SSC), with one term (that relating to tariff caps) located in the Special Conditions (SC) of the transmission licence. The BMPOLR licence conditions, which transfer the obligation to NGG's transmission licence and would become effective if we issue a direction under each of SSC B6 and SC 11G, comprise:

- SSC B7 (Provision of Meters) – this condition requires the licensee to comply with any reasonable request by a relevant gas transporter to provide and install a traditional domestic gas meter. It reflects the obligations contained in SC 5A of NGG's distribution licence and in paragraph 3 onwards of SSC D17 of the gas transporter licence (the first paragraphs of SSC D17 relate to the Meter Provider of Last Resort (MPOLR) obligation, which is not relevant here, because NGG would be only the BMPOLR obligation holder post-sale). Paragraph 6 and 7 from SSC D17 of the gas distribution licence are also excluded – paragraph 6 is not used and paragraph 7 relates to MPOLR;
- SSC B8 (Provision of Terms) – this condition details requirements on the licensee regarding the provision of terms to relevant gas transporters for the provision of traditional domestic gas meters. It replicates SC 5B of NGG's distribution licence (and as this predominantly replicates SSC D18 of the gas transporter licence, we are not proposing to replicate SSC D18 in the transmission licence);
- SSC B9 (Non-discrimination in the Provision of Metering Activities) – this replicates SSC D19 of the gas transporter licence, which requires the licensee to avoid undue discrimination and undue preference in the provision of metering services; and
- SSC B10 (Provision of services for specific domestic customer groups) – this replicates SSC D13 of the gas transporter licence, which details requirements on the licensee regarding the provision of services to vulnerable customers;
- SSC B11 (Arrangements for access to premises) – this replicates SSC D14 of the gas transporter licence, which details requirements on the licensee relating to access to customer premises;
- SSC B12 (Reporting on Performance) – this reflects SSC D16 of the gas transporter licence, which details the requirements on the licensee to provide information to the Authority, Citizens Advice and Citizens Advice Scotland on relevant information in respect of SSC B10 and SSC B11 above;
- SC 11H (Restriction of price in respect of Tariff Capped Metering Activities) – this replicates SC 4D from NGG's distribution licence, recognising that such tariff caps will apply to NGG in respect of BMPOLR in the transmission licence.

We are publishing notice of a statutory consultation under section 23(2) of the Gas Act 1986 alongside this letter. The notice details the proposed licence modifications.

Next Steps

Any representation with respect to the proposed licence modifications should be sent to us by email on or before 31 May 2016 to NGGD.Separation@ofgem.gov.uk.

Unless clearly marked as confidential, all responses will be published on our website. It would be helpful if responses could be submitted in electronic form (so they can be placed easily on our website). Respondents may request that their response, or part of response is kept confidential and those who wish to do so should clearly mark their documents to that effect and include reasons for confidentiality. Ofgem shall respect this request, subject to disclosure requirements, for example, under the Freedom of Information Act 2000 or the Environment Information Regulations 2004.

Subject to the responses we receive, we may decide to make the proposed modifications. In this event, the modifications will take effect not less than 56 days after our decision is published.

A handwritten signature in blue ink that reads "M. Frerk". The signature is written in a cursive style with a clear initial "M." followed by "Frerk".

Maxine Frerk
Interim Senior Partner, Networks

Duly authorised on behalf of the Gas and Electricity Markets Authority