



**Association of
Independent
Gas Transporters**



Wood Howe, Keldwyth Drive, Troutbeck Bridge, Windermere, Cumbria, LA23 1NJ

Tel: 07790 877148 E-mail john.barrett@aigt.org.uk Web: www.aigt.org.uk

13th August 2015

Deirdre Bell
Ofgem
9 Millbank
London
SW1P 3GE

By E-mail

Dear Deirdre,

Second Consultation on amending the disapplication conditions of the Independent Gas Transporter (IGT) and Independent Distribution Network Operator (IDNO) licences

I write on behalf of AIGT¹ and CNA² members in response to the above consultation.

During 2014, the AIGT and CNA worked closely with Ofgem to develop and review revised conditions on disapplication in SLC 1 and BA2 and submitted a joint response to the first consultation earlier this year. AIGT and CNA member are pleased to see that a number of the proposed changes fed back by the industry have been incorporated into the latest proposed drafting.

In summary AIGT and CNA members:

- Believe that in general the amendments provide further clarity on the end to end process for disapplication against SL1 of the IGT licence and BA2 of the IDNO licence; but
- Have suggested a change to the proposed drafting under paragraphs 19 of SL1 and 17 of BA2 to improve clarity and align with arrangements of other licensees.

The Association's lawyers are currently reviewing the amended licence drafting and I will provide further comments within the next week should any additional matters of concern be identified.

The AIGT and CNA's full response to the consultation can be found in Appendix 1 and the members would welcome the opportunity to discuss the matters raised with you further.

Yours sincerely,

**John Barrett, Secretary, Association of Independent Gas Transporters (AIGT)
& Competitive Networks Association (CNA)**

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Registered Office Arcadia House, Maritime Walk, Ocean Village, Southampton SO14 3TL
Secretary: John Barrett CEng, MIGEM

Appendix 1

For ease of reference the same five headings have been used as in the consultation document.

Scope of disapplication mechanism in IGT licence

Our previous response highlighted that the changes to the scope of disapplication meant that neither the obligation to charge on the basis of relative price control nor the obligation to charge on the basis of an agreed methodology applies where a disapplication takes effect. On the basis that Ofgem do not see this as a directly relevant issue, AIGT and CNA members are supportive of the proposed drafting amendments.

Referral to the Competition and Markets Authority (CMA)

AIGT and CNA members are of the view that the drafting reflects the new procedure regarding the right of appeal to the CMA against a proposed modification to SLC1 and BA2. AIGT and CNA members are supportive of the drafting changes.

Duty to provide further information

Based on the response provided by Ofgem to our original query, AIGT and CNA members are supportive of the revised drafting.

Disapplication following involvement of the CMA

Having reviewed the feedback from Ofgem, AIGT and CNA members are now supportive of the intent of the proposed drafting. They believe, however, that the drafting of paragraphs 19 of SL1 and 17 of BA2 could be developed to provide additional clarity on the process where the CMA refers the matter back to the Authority under 23E(2)(b) and 23E(2)(c) of the Act. Having reviewed the equivalent special licence conditions of National Grid NTS, AIGT and CNA members would suggest amending the proposed drafting to align with Part F, paragraph 11A.11 by specifically including references the conditions of 23E(2)(b)&(c) to clarify that the Disapplication Notice can only be served if the CMA has not remitted nor substituted the matter back to the Authority. Not only will this improve clarity it will also be consistent with the approach used in other licences.

Minor Drafting Errors and Clarifications

AIGT and CNA members are pleased to see that all but one of the drafting amendments they put forward have been incorporated into the revised legal text. The amendment that was not included was a minor point and its exclusion should not detract from the intent of the relevant paragraph.

General Observations

AIGT and CNA have two questions relating to the general disapplication process on which Ofgem's view would be appreciated. These are:

- If the Authority has been directed under 23E(2)(b) or (c) of the Act and the Authority does not undertake the required action, can the licensee still serve the disapplication notice (as if the CMA hadn't been involved, as per para 17)? And;
- Whether a Disapplication Notice can be applied retrospectively; i.e. with effect from the Disapplication Date (should the CMA process be longer than 18 months)?

¹ **AIGT Members are:** GTC Pipelines Ltd, Independent Pipelines Ltd, ES Pipelines Ltd, Indigo Pipelines Ltd, Energetics Gas Ltd, Fulcrum Pipelines Ltd, and Energy Asset Pipelines Ltd.

² **CNA Members are:** The Electricity Network Company Ltd, Independent Power Networks, ESP Electricity Ltd, Energetics Electricity Ltd, and Harlaxton Energy Networks Ltd.