



Making a positive difference
for energy consumers

To gas transporters, gas shippers, National Grid Gas plc and other interested parties

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Dear Colleagues

Consultation on changes to Standard Special Condition A15 (Agency) of the Gas Transporters Licence

We¹ are interested in your views on our proposed changes to the gas transporter Standard Special Condition A15 (Agency) of the Gas Transporters Licence.² The³ proposed licence changes are required in order to implement the options developed by Ofgem in consultation with industry as a result of our review of Xoserve's finance, governance and ownership (FGO) arrangements.

Background

Xoserve⁴ is the provider of a range of centralised data services, supporting the operation of the Great Britain gas industry. In 2011, as a result of the gas distribution price control review (RIIO-GD1), we published a review to identify whether Xoserve's FGO arrangements were able to facilitate the provision of an efficient and high quality service, responsive to network users' needs, and wider industry change.

We consulted on options for Xoserve's new FGO arrangements in January 2012⁵ and in April 2013.⁶ These consultations set out a number of options for a new governance model. We concluded that a full co-operative governance model was most efficient and should be established. Detail on the implementation of the full co-operative model was provided in the October 2013⁷ consultation, where recommendations for implementation were made. Proposals for setting up a new legal and regulatory framework to establish a central service provider (CSP) were consulted on in February 2014.⁸

Further industry led work has been carried out to develop the detail of the proposed deliverables. The detail of the arrangements worked on by industry has been carefully reviewed and further developed by Ofgem and our proposed amendments to Standard Special Condition A15 are set out in this consultation. Consequential amendments to other

¹ The terms "the Authority", "we", "us" and "our" are used interchangeably in this letter. The Authority is the gas and electricity markets authority. Ofgem is the office of the authority.

² <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

³ <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

⁴ See: <http://xoserve.com/>

⁵ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-consultation-review-xoserve>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/consultation-implementing-new-funding-governance-and-ownership-arrangements-xoserve-gas-transporter-central-agent>

⁷ <https://www.ofgem.gov.uk/publications-and-updates/xoserve-decision-relation-new-funding-governance-and-ownership-arrangements-gas-transporters%E2%80%99-central-agent>

⁸ <https://www.ofgem.gov.uk/publications-and-updates/xoserve---consultation-legal-and-regulatory-framework-establish-new-arrangements-gas-central-service-provider>

licences will also be required as a result of this licence change and will be set out in the statutory consultation.

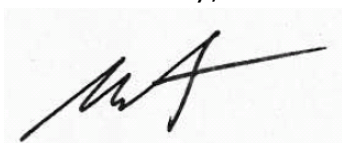
Ofgem is also reviewing the FGO funding arrangements and will publish more information in due course.

Consultation

We are seeking views on the proposals for amendments to the gas transporter licence (Appendix 1) which reflects the proposed changes made to Xoserve's obligations and contracts; corporate governance; CDSP governance; business planning and budget setting; and charging and cost allocation.

The consultation will be open until 14 December 2015. We welcome views from gas transporters, gas shippers, National Grid Gas plc (NGG) and other interested parties. If you have any questions in relation to this letter please contact me by e-mail (mick.watson@ofgem.gov.uk) or on 020 7901 7416.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Mick Watson', written on a light-colored background.

Mick Watson

Head of Gas Distribution

Appendix 1

Standard Special Condition A15A: Central Data Service Provider [New condition]

Introduction

1. The purpose of this condition is to provide for the appointment of a “central data service provider (“CDSP”) including its associated services and systems and to set out the obligations with which the licensee must comply with respect to the establishment and the ongoing operation of the CDSP.
2. This condition sets out:
 - (a) the minimum obligations of the licensee with respect to appointing the CDSP from the phase 1 implementation date (as defined in paragraph 3 of this condition) to the phase 2 implementation date (as defined in paragraph 5 of this condition);
 - (b) the minimum obligations with respect to the CDSP at the phase 2 implementation date (as defined in paragraph 5 of this condition); and
 - (c) the minimum obligations of the licensee with respect to the appointment and the ongoing operation of the CDSP.
3. Parts A and B of this condition come into effect in this licence on 1 April 2016 (unless the Authority, following consultation with interested parties, directs otherwise in writing) (such date being the “phase 1 implementation date”).
4. Part C of this condition comes into effect in this licence on the date on which a direction of the Authority in accordance with paragraph 5 of this condition has effect.
5. Once the Authority is satisfied that the CDSP has been established in accordance with Part A and Part B of this condition it will issue a direction bringing into effect Part C of this condition. Such direction shall be issued no earlier than 1 April 2017 (such date being the “phase 2 implementation date”). On the date on which this direction of the Authority has effect (the phase 2 implementation date), Standard Special Condition A15 (Agency) will cease to have effect.

Part A: Obligations of the licensee in appointing the CDSP from the phase 1 implementation date until the phase 2 implementation date

6. The licensee shall, together with the other gas transporters which own shares in the agent that appoints the CDSP (relevant gas transporters) appoint the CDSP to provide CDSP services and systems (together referred to as “CDSP services”) and systems as set out in the uniform network code (UNC) in compliance with the minimum requirements set out in Part A of this condition. This appointment shall be made and the CDSP shall be operational on the phase 1 implementation date (unless the Authority, following consultation with interested parties, consents otherwise in writing).
7. In respect of the period from phase 1 implementation date 1 April 2016, the licensee shall, together with the other relevant gas transporters, ensure that:

- (a) the CDSP's constitution includes a provision for the appointment of directors nominated by users of the CDSP services other than the relevant gas transporters (such users being "Non-RGT users");
 - (b) Non-RGT users' representatives are given the opportunity to participate in the contract management and change management process related to the CDSP services and are given the opportunity to participate in the decision making process in respect of matters that will have an effect on the delivery of CDSP services from the phase 2 implementation date;
 - (c) the CDSP publishes its annual budget for CDSP services in respect of the year commencing 1 April 2016;
 - (d) the CDSP consults with, and takes due regard of responses of, Non-RGT users in respect of the business plan and budget for CDSP services in respect of the financial year commencing 1 April 2017.
8. The licensee shall, together with the other relevant gas transporters, bring forward modifications to the uniform network code so that the uniform network code sets out from the phase 2 implementation date:
- (a) obligations on the licensee and other users of CDSP services (to the extent such other users of the CDSP services are bound by the uniform network code) to:
 - (i) jointly control and govern the CDSP on an economic and efficient basis;
 - (ii) use or procure the use of CDSP services and systems (together referred to as "CDSP services"), as set out in the uniform network code from the CDSP;
 - (iii) enter into a service agreement with the CDSP (the "CDSP service agreement") and to keep the CDSP service agreement under review to ensure it continues to comply with the relevant sections of the uniform network code; and
 - (iv) pay for CDSP services used in accordance with the charging statement prepared by the CDSP ("the CDSP charging statement"); and
 - (b) a process enabling a user of CDSP services to appeal the CDSP annual budget (as defined in paragraph 11(c)) by issuing a notice to the Authority in writing. The circumstances under which such notice can be issued are to be limited to where that party considers the CDSP annual budget to not be fit for purpose for the CDSP to be able to fulfill its obligation specified in paragraph 11(b) of this condition.
9. Part A of this condition will cease to have effect on the phase 2 implementation date.

Part B: Minimum requirements relating to the CDSP provider at the phase 2 implementation date

10. The licensee shall, together with the other relevant gas transporters, ensure that prior to the phase 2 implementation date the CDSP shall:
- (a) be a company under the joint ownership of the licensee and of the other relevant gas transporters;

- (b) be a company the purpose of which is to primarily provide the CDSP services and the purpose of which is not to return a profit (whether income or capital) through its share capital and shall set out within its articles of association a prohibition on the distribution of profits and declaration of dividends (save for dividends in respect of profits relating to periods prior to the phase 2 implementation date); and
 - (c) be a company jointly controlled and governed by the licensee and by other users of the CDSP services. This must be reflected in the company's articles of association, which at a minimum shall require:
 - (i) a provision for the appointment and removal of directors of the CDSP by the licensee and by other users of the CDSP services on a transparent and equitable basis;
 - (ii) a provision for the licensee, together with the other relevant gas transporters, to require the CDSP to make changes to the CDSP annual budget where the Authority requires such changes to be made pursuant to the powers given to it in paragraph 16 of this condition.
11. The licensee shall, together with the other relevant gas transporters, ensure that prior to the phase 2 implementation date the CDSP service agreement includes obligations on the CDSP to:
- (a) provide or otherwise procure the CDSP services which shall include services set out in the uniform network code for relevant gas transporters, gas shippers and other users of the CDSP services;
 - (b) provide or otherwise procure CDSP services effectively to help facilitate the efficient and integrated operation of the gas industry;
 - (c) produce, in consultation with users of the CDSP services, and publish an annual budget in respect of the provision of the CDSP ("the CDSP annual budget");
 - (d) publish and keep under review a methodology for charging for CDSP ("the CDSP charging methodology") and the CDSP charging statement setting out those charges where the aim of both is to recover the CDSP annual budget (as amended pursuant to any direction from the Authority);
 - (e) notify the Authority in writing if it increases its charges during a financial year; and
 - (f) amend the CDSP annual budget when directed to do so by the licensee, together with the other relevant gas transporters, where the Authority requires such changes to be made pursuant to the powers given to it in paragraph 14 of this condition.
12. Before implementing the first CDSP charging methodology which shall result in charges being levied on users of CDSP services in addition to the gas transporters and associated CDSP charging statement the licensee shall, together with the other relevant gas transporters, procure that the CDSP provider shall, send a report to the Authority setting out:
- (a) the draft CDSP charging methodology and associated draft CDSP charging statement that is intended to be implemented; and

- (b) how the development of the proposed CDSP charging methodology has taken into account the views of users of the CDSP services.
13. The licensee shall, together with the other relevant gas transporters, ensure that the CDSP implements the CDSP charging methodology and associated CDSP charging statement referred to in paragraph 12 unless, within 42 days of receiving the report under paragraph 12 of this condition, the Authority has directed the licensee not to implement either one or both of them.
14. If the Authority has directed the licensee not to ensure the implementation of the draft CDSP charging methodology or draft CDSP charging statement referred to in paragraph 12 then it may:
- (a) direct the licensee, and the other relevant gas transporters, to require the CDSP to amend the draft CDSP charging methodology and the draft CDSP charging statement as set out in the direction; or
 - (b) require the licensee, and the other relevant gas transporters, to require the CDSP to consider further amendments and consult users of the CDSP services prior to resubmitting the draft CDSP charging methodology and the draft CDSP charging statement to the Authority.

Part C: Obligations of the licensee with respect to the ongoing operation of the CDSP

15. Where the Authority receives a notification under paragraph 8(b) of this condition it shall decide whether there are grounds for appeal.
16. While the Authority is considering whether there are grounds for appeal the CDSP annual budget under appeal shall continue to be in effect.
17. If having made its assessment the Authority decides that the appeal should be allowed it shall issue a direction to every licensee in whose licence this condition has effect requiring the licensee to require the CDSP to make changes to the CDSP annual budget as set out in its direction.
18. The direction, issued under paragraph 17, will state:
- (a) the value of the amended CDSP annual budget that is to apply;
 - (b) the years in respect of which the amended CDSP annual budget applies; and
 - (c) any other conditions relating to the CDSP annual budget that the Authority deems appropriate to impose of the relevant licensees.
19. Prior to issuing a direction under paragraph 17 of this condition the Authority shall:
- (a) give notice to all licensees, in whose licence this condition has effect, and other users of CDSP services that it proposes to issue the direction:
 - (i) specifying the date on which it proposes that it should have effect;

- (ii) setting out the text of the proposed direction and the Authority's reasons for proposing it; and
 - (iii) specifying the time (which must not be a period of less than 28 days from the date of the notice) within which representations or objections with respect to the proposal may be made; and
 - (b) consider any representations or objections in response to the notice that are duly received and not withdrawn.
20. The licensee must use reasonable endeavours to ensure that the charging methodology and the charging statement will facilitate the objective of economic, efficient and transparent charging for the provision of the CDSP services (the "charging methodology objective").
21. Before making modifications to the CDSP charging methodology or to the CDSP charging statement the licensee shall consult the relevant gas transporters and interested parties on the proposed modifications and shall allow them a period of not less than 28 days within which to make written representations and shall furnish the Authority with a report setting out:
- (a) the terms originally proposed for the modification;
 - (b) the representations (if any) made by relevant shippers;
 - (c) any changes to the terms of the modification intended as a consequence of such representations.
22. The licensee must, if so directed by the Authority, review the current CDSP charging methodology and the CDSP charging statements, in consultation with:
- (a) relevant gas transporters;
 - (b) interested parties; and
 - (c) seek to make such modifications to the CDSP charging methodology and to the CDSP charging statement as it considers reasonably necessary to better facilitate the achievement of the charging methodology objective:
 - (i) the extent to which, in the licensee's opinion, the charging methodology objective has been achieved during the period to which it relates;
 - (ii) whether the objective could be better achieved by modification of the charging methodology; and
 - (iii) if so, the modifications which should be made for that purpose.

Standard Special Condition A15: Agency [Modification to existing condition]

[insert above paragraph 1]

1A. Once the Authority is satisfied that the CDSP has been appointed in accordance with Part A and Part B of Standard Special Condition A15A (Central Data Service Provider) it will issue a direction bringing into effect Part C of Standard Special Condition A15A and on the date on which this direction of the Authority has effect this condition will cease to have effect.