

National Grid's sale of Gas Distribution Network business - consultation on regulatory aspects

Consultation

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On 10 November 2015, National Grid Plc (NG) announced it intended to sell majority shares in its gas distribution business. In preparation for this, NG intends to transfer its distribution assets and distribution licence from National Grid Gas Plc (NGG) to a new subsidiary company (NewCo). The Authority has a role in deciding whether to consent to these transfers.

This document describes our role in the proposed sale process and consults on:

- issues arising from the potential transfers;
- proposed conditions, subject to which any consent could be given; and
- proposed licence changes in the event that the transfers of the assets and of the licence take place.

Stakeholders have until 31 May 2016 to provide their views on the issues raised in this consultation, to NGGD.Separation@ofgem.gov.uk.

Context

Gas is transported through the National Transmission System (NTS)¹ and then through eight gas distribution networks (GDNs) to reach around 22 million consumers in Great Britain. Each GDN covers a separate region.

Until 1 June 2005, all eight GDNs were owned by National Grid Plc (NG). On 1 June 2005, NG sold four of the eight GDNs. They are now operated by NG (its remaining four), Northern Gas Networks (one), Scotia Gas Networks (two) and Wales & West Utilities (one)².

We regulate the GDNs, as they have a monopoly over each region they serve, to ensure consumers receive the service they need at an efficient cost. We do so using the RIIO (Revenue = Incentives + Innovation + Outputs) price control model.

NG announced in November 2015 its intention to sell a majority stake in its gas distribution business which owns and operates its remaining four GDNs, which serve 10.9 million gas consumers.

In preparation for this proposed sale, NG will seek to transfer the assets and licence of its gas distribution business to a new subsidiary company (NewCo). The Authority has a role in deciding whether to consent to these proposed transfers.

NG has obligations with respect to its gas distribution business that cut across all GDNs (eg in providing the emergency call handling service on behalf of all GDNs and acting as the backstop meter provider of last resort). Through this consultation, we are interested in hearing your views on the impact of the intended asset disposal to the NewCo and transfer of the distribution licence to the NewCo on these activities. We do not envisage a change to the current RIIO price control of the GDNs as a result of this proposed sale.

¹ NTS is owned and operated by National Grid Plc.

² The four GDN operators are owned by three independent ownership groups as NGN and WWU are majority owned by Cheung Kong Infrastructure (CKI).

Associated documents

Ofgem documents

Statutory Consultation on proposed new standard special conditions and special conditions in National Grid Gas plc's National Transmission System (NTS) gas transporter licence, 3 May 2016.

<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-new-standard-special-conditions-and-special-conditions-national-grid-gas-plc-s-national-transmission-system-nts-gas-transporter-licence>

Ofgem Open Letter: Sale of National Grid's Gas Distribution Network Business, 17 February 2016.

https://www.ofgem.gov.uk/system/files/docs/2016/02/open_letter_feb_2016_final_pub.pdf

National Grid documents

National Grid, Sale of a majority stake in National Grid's Gas Distribution Network business: Response Document, April 2016.

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

National Grid, Stakeholder consultation - Sale of a majority stake in National Grid's Gas Distribution Network business, 16 February 2016.

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

Contents

Executive Summary	5
1. Introduction	7
2. Our role	10
3. Identified issues	16
4. Conditions for consent.....	28
5. Proposed licence changes.....	32
6. Next steps	36
Appendices	38
Appendix 1 - Consultation Response and Questions	39
Appendix 2 – Indicative Process.....	41
Appendix 3 – Proposed Amendments for Metering	42
Appendix 4 – Other Licence Modifications	68
Appendix 5 - Feedback Questionnaire	77

Executive Summary

National Grid's proposed sale

On 10 November 2015, National Grid Plc (NG) announced it was starting the process of selling a majority stake in its gas distribution business, currently owned by a subsidiary of NG, National Grid Gas Plc (NGG). This business currently serves 10.9 million gas consumers.

This process of sale would consist of two stages: stage 1, **hive across** – NG will transfer its gas distribution assets and licence from NGG to a subsidiary of NG (NewCo); and stage 2, **share sale** – NG then intends to sell a majority of its shares in the newly licensed NewCo.

The Authority's role

The Authority's³ formal role in the process is in stage 1 (hive across). We will decide, whether to: (a) consent to the transfer of gas distribution network assets to NewCo⁴; (b) modify and transfer the gas distribution licence from NGG to NewCo⁵; and (c) make any changes to NGG's transmission licence⁶. In general, we consider the transfer of assets between licensed entities (as would happen here between NGG and NewCo) to be relatively low risk. In making our decision on whether to grant consent outright, conditionally, or to refuse consent, we will adopt an approach that is calculated to protect the interests of existing and future consumers. We would need to ensure:

- 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 customers are fully protected.

The Authority has no formal role in stage 2 (share sale). We have stated in our open letter of 25 May 2010⁷ that *"the potential impact of mergers on our ability to regulate effectively in the interests of consumers is a legitimate factor that should be*

³ The terms "the Authority", "we" and "us" are used interchangeably in this document.

⁴ Under Standard Special Condition (SSC) A27 of the gas transporter licence and subject to this consultation.

⁵ Under section 8AA of the Gas Act 1986 and subject to a consultation at a later date.

⁶ Under section 23 of the Gas Act 1986 and subject to a consultation at a later date.

⁷ 'Public statement on Ofgem's network company merger policy':

<https://www.ofgem.gov.uk/sites/default/files/docs/2010/05/merger-policy-statement.pdf>

considered by the merger authorities as part of the merger assessment process." To this end, we would "advise the merger authorities and Government on any relevant mergers based on the relevant factors surrounding the merger in question."

This Consultation

We are now consulting⁸ on the issues arising from the potential transfer of assets and distribution licence (including any conditions we may place on the transfer of the assets and the modifications that are potentially required to the distribution and transmission licences), to ensure that any decision we make protects the interests of existing and future gas consumers.

NG also conducted a three-week Stakeholder Consultation in February 2016 on its intended sale and published its response to this Stakeholder Consultation in April 2016. NG explained that, although the ownership of its gas business would change, it expected no change in the services that stakeholders receive.

Taking into account the responses NG have received to their consultation, and from our own analysis, we are consulting on relatively limited change, in terms of their practical effects, to the regulatory arrangements and relevant licence obligations required to facilitate the proposed hive across. The proposed regulatory changes are not expected to have a detrimental effect on the costs incurred by, or the services provided to, gas consumers.

Next steps

Stakeholders have until 31 May 2016 to provide their views on the issues raised in this consultation. Shortly after this consultation closes, we expect NG to issue us with a notice for its proposal to transfer its gas distribution assets. In deciding whether to grant consent to the asset transfer, we will consider responses to this consultation and will publish our decision having duly taken into account responses to this consultation.

⁸ We have also separately launched a statutory consultation in relation to the amendments to the NGG's transmission licence with regards to the Backstop Meter Provider of Last Resort obligations.

1. Introduction

Chapter summary

A brief background to our role in National Grid Plc's (NG) proposed sale of a majority stake in its gas distribution business, summarises the purpose of this consultation and sets out the structure of the remainder of this document.

Background

1.1. There are eight gas distribution networks (GDNs) in Great Britain, each of which covers a separate region. The GDN licensees are responsible for operating, maintaining and extending the networks, for taking gas from the high pressure National Transmission System (NTS) and for providing a 24-hour gas emergency service. Until 1 June 2005, all eight GDNs were owned by National Grid Gas Plc (NGG)⁹, a subsidiary of NG. On 1 June 2005, NG sold four of its eight GDNs.

1.2. On 10 November 2015, NG announced its intention to sell a majority stake in its gas distribution business, comprising NGG's remaining four GDNs. NG indicated the proposed sale process would begin in 2016 and was likely to be completed in early 2017.

1.3. The intended sale process would consist of two broad stages:

- stage 1, **hive across**: in preparation for the intended share sale, NG would need to transfer the gas distribution assets and licence from NGG to a new subsidiary of NG (NewCo); and
- stage 2, **share sale**: NG then intends to sell a majority of the shares in NewCo.

1.4 The Authority has a formal role in stage 1 (hive across). Our involvement would be required in three respects. We would need to make a decision as to whether to consent to:¹⁰

- a) a transfer of the gas distribution network assets to NewCo under Standard Special Condition (SSC) A27 of the gas distribution licence;
- b) a transfer and modification of the gas distribution gas transporter licence to NewCo (under section 8AA of the Gas Act 1986, as amended); and
- c) any modifications would be needed to the NTS gas transporter licence in the event of a transfer of the assets and licence to NewCo, to ensure that relevant

⁹ Operating as Transco Plc, a subsidiary of National Grid Transco Plc, at the time of sale in 2005.

¹⁰ We referred to these requirements in our 17 February 2016 open letter: https://www.ofgem.gov.uk/system/files/docs/2016/02/open_letter_feb_2016_final_pub.pdf

obligations are suitably allocated between NGG and the NewCo for the post hive across arrangements.

1.4. We have no formal role in stage 2 of the sale process (the sale of the shares). In general, we are prepared to facilitate corporate transactions as doing so maintains investor confidence, which is in the longer term interest of consumers. Our ring-fence and other licence protections allow us to regulate licensees irrespective of who owns their shares. However, the sale could lead to loss of independent comparators in the sector, ie a 'merger'. We stated in our open letter of 25 May 2010¹¹ that "*the potential impact of mergers on our ability to regulate effectively in the interests of consumers is a legitimate factor that should be considered by the merger authorities as part of the merger assessment process.*" This remains our position. To this end, we would "*advise the merger authorities and Government on any relevant mergers based on the relevant factors surrounding the merger in question.*" It would remain open to Ofgem to take account of any changes to market structure when considering its approach to RIIO-GD2¹².

Purpose of this document

1.5. The purpose of this document is to set out and invite comments from stakeholders on the issues arising from the potential transfer of gas distribution assets and gas distribution licence from NGG to NewCo in preparation for the proposed sale, the conditions precedent and subsequent subject to which any consent may be given, and the drafts of proposed licence modifications to the distribution and transmission licences (ahead of consulting on them formally later in the process were we to consent to the asset transfer).


Structure of this document

1.6. The remainder of this documents is structured as follows:

- Chapter 2 provides context on the GDNs, the consents required for NGG's distribution assets and licence to be transferred, and our relevant duties and objectives;
- Chapter 3 describes current NGG obligations that might be affected by the hive across and invites comments on those;
- Chapter 4 outlines our proposed conditions for the hive across, subject to which our consent would be given;
- Chapter 5 identifies the proposed licence changes to enable the hive across;
- Chapter 6 sets out the next steps;
- Appendix 1 summarises the questions raised in the consultation and provides instructions for responding;

¹¹ 'Public statement on Ofgem's network company merger policy': <https://www.ofgem.gov.uk/sites/default/files/docs/2010/05/merger-policy-statement.pdf>

¹² Ofgem's next gas distribution price control period starting in 2021.



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- Appendix 2 contains an indicative process diagram for the stage 1 (hive across) procedure;
- Appendices 3 and 4 detail proposed licence modifications; and
- Appendix 5 is a feedback questionnaire.

2. Our role

Chapter summary

This chapters provides a background to the gas distribution networks (GDNs), the sale process and outlines our and various other authorities' roles in the sale process.

Gas Distribution Networks

2.1. The eight GDNs in Great Britain are listed in Figure 1, together with the companies that currently operate them and a representation of the geographical areas they cover. In 2014-15 the GDNs transported 508 TWh (534 TWh when corrected to seasonal normal weather conditions) of gas in the year from the National Transmission System (NTS) to the homes and businesses of around 22 million consumers in Great Britain. As these networks are regional monopolies, we set price controls on them under our RIIO¹³ framework.

Figure 1: Gas Distribution Networks

Company	Gas Distribution Network (GDN)
National Grid Gas plc	East of England
	North London
	North West
	West Midlands
Northern Gas Networks Limited	Northern
Scotia Gas Networks Limited (SGN)	Scotland
	Southern
Wales & West Utilities Limited	Wales and West

Source: Pg 8, Ofgem RIIO-GD1 Annual Report 2014-15.



¹³ The current gas price control (referred to as RIIO-GD1) runs from 1 April 2013 to 31 March 2021. RIIO stands for: Revenue = Incentives + Innovation + Outputs.

Background to 2005 sale of GDNs by National Grid

2.2. Until 1 June 2005, all eight GDNs were owned by National Grid Gas Plc (NGG)¹⁴, a subsidiary of National Grid Plc (NG). On 1 June 2005, NG sold four of its eight GDNs as follows:

- the Scotland and Southern GDNs were purchased by a consortium of SSE Plc, Borealis Infrastructure Management Inc and Ontario Teachers' Pension Plan Board;
- Wales and West GDN was purchased by Macquarie Infrastructure¹⁵; and
- Northern GDN was purchased by a combination of companies associated with Li Ka Shing, notably Cheung Kong Infrastructure (CKI) and SAS Trustee Corporation.

2.3. The eight GDNs are currently held in three ownership groups: NG; CKI; and SSE (with Borealis and the Ontario Teachers' Pension Plan Board).

2.4. In order to facilitate the 2005 sale and accommodate a model with multiple gas transporters, numerous changes were made to the regulatory and commercial architecture, with significant involvement of the Authority. A multiparty "Uniform Network Code" (UNC) was developed, supported by a "Joint Office", and the supply point administration service was provided by a recast "Xoserve". Many commercial arrangements were entered into between NGG and the sold GDNs, some of a temporary nature to facilitate the sale, and other of a more enduring nature. The then existing gas transporters licence was amended and split to enable a differentiation between the transmission licence and distribution licence. Within this context, our role included:

- extensive work in changing the gas transporter licence conditions;
- leading the development of the overall governance arrangements (in the form of Xoserve);
- ensuring that the UNC was developed in a way that protected the interests of existing and future gas consumers; and
- ensuring the appropriate allocation of roles and responsibilities between the NTS and GDNs (eg investment planning, system operation when problems arise).

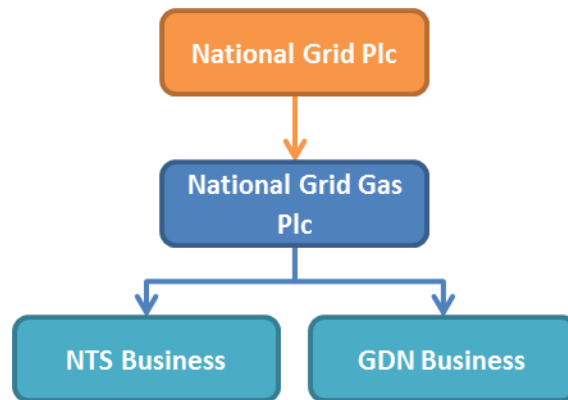
¹⁴ Operating as Transco Plc, a subsidiary of National Grid Transco Plc, at the time of sale in 2005.

¹⁵ Subsequently, in 2012, Macquarie sold its interest in Wales and West to Cheung Kong Infrastructure (CKI). There was no significant formal role for the Authority in this sale.

2016-17 NG's proposed GDN sale programme

2.5. The current structure of NG's gas business is depicted in Figure 2 below. At present, NGG holds two gas transporter licences, one for its NTS business and one for its GDN business. NGG also owns the transportation assets for both of these businesses, which, in general, are all assets between the meter supply point in the distribution network and the main entry points on the NTS system, eg meter points at gas storage facilities, gas reception terminals or gas interconnectors. Although they reside in the same entity, the NTS and GDN businesses are operated by NGG as predominantly separate entities with some shared corporate services such as human resources, information systems and finance.

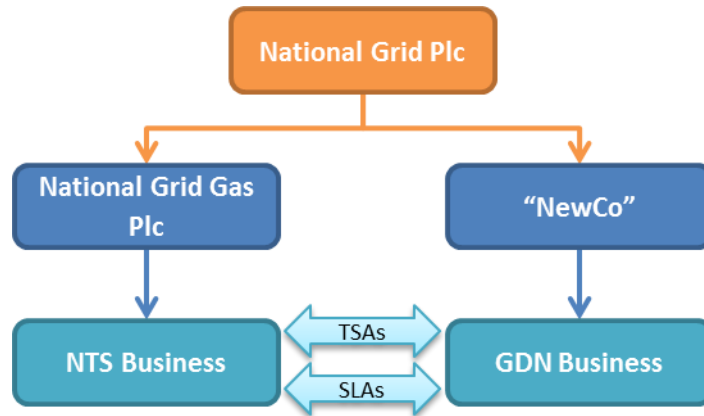
Figure 2: Current structure of NG's gas businesses



2.6. In preparation for the hive across, a new wholly owned subsidiary (NewCo) of NG has been created. The proposal is that the NewCo would own the GDN assets and hold the gas distribution licence previously owned/held by NGG. The assets that NGG would transfer would be those required to safely and efficiently operate its four distribution networks including transportation, land and some corporate assets.

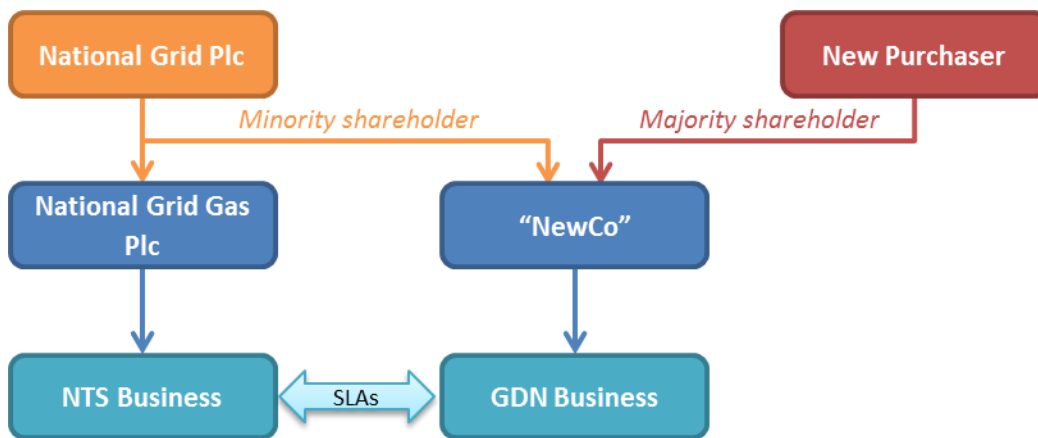
2.7. NGG must seek to notify the Authority of its proposal to transfer its transportation assets and any compulsorily acquired land under Standard Special Condition (SSC) A27 of the distribution licence and Schedule 3 of the Gas Act 1986. We expect the transportation assets to comprise all assets relating to the conveyance of gas between the NTS/Local Distribution Zone (LDZ) Offtakes and the meter supply points for each of the four distribution networks. Subject to our consents, and subject to the Secretary of State's consent, the new structure of NG as it would be after hive across is shown in Figure 3 below. At this stage, NG would own and operate two legally separate gas-related entities: NGG, containing the NTS business, and NewCo, containing the GDN business.

Figure 3: Proposed structure of NG's gas businesses after hive across¹⁶



2.8. Following the proposed hive across NG intends to sell a majority stake in its subsidiary company, NewCo. Subject to a successful hive across and subsequent majority share sale, the final structure at the conclusion of the 2016/17 sale process would be as shown in Figure 4 below.

Figure 4: Proposed structure following share sale



Our role in 2016/17 National Grid GDN sale

2.9. In order to dispose of a gas transportation asset (or otherwise relinquish operational control of a transportation asset), including a GDN, the licensee must notify the Authority under SSC A27 of the gas transporter licence. The Authority's consent can be granted subject to conditions that it specifies being met (SSC

¹⁶ See Chapter 3 for details of Transitional Service Agreements (TSAs) and Service Level Agreements (SLAs).

A27.10(b)). (See Chapter 4 for our proposed conditions to which any consent would be subject.)

2.10. The Authority's consent is also required to transfer a licence from NGG to NewCo (section 8AA(1) of the Gas Act 1986 (the Act)). The criteria that the Authority applies in deciding whether to grant consent to a licence transfer are the same as it would apply if it were deciding to grant a new licence to the transferee (section 8AA(6) of the Act). Consent can be given subject to modification being made to the distribution licence (section 8AA(4) of the Act).

2.11. Should the Authority consent to the transfer of the distribution licence, the Authority would also consult on whether any consequential changes would need to be made to NGG's NTS gas transporter licence (under section 23(2) of the Act).

2.12. Further, we have granted consents to NGG's distribution business under its licence conditions for some of its activities or actions. The proposed transfer of the assets and of NGG's licence to NewCo may necessitate the granting of equivalent consents. Additional new consents may also be required for the provision of certain services during the transition period. See Chapter 4 for details.

2.13. In general, we consider transfers between two co-owned licensees as low risk. Notwithstanding, within this context, in making a decision on whether to consent to the proposed asset and licence transfer we would need to ensure:

- relevant obligations are set out either in the distribution licence or in the transmission licence at all times;
- we address any stakeholder concerns around 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 GDN consumers are fully protected.

2.14. We have been working with NG to understand, among other matters, the basis of its proposed allocation of assets, services and obligations between transmission and distribution licensees in the event of a disposal of the distribution assets. A proposed condition of our consent relates to NG providing us with assurance on this (see Chapter 4).

2.15. As already described in paragraph 1.4, we have no formal role in relation to the potential share sale if it were to result in a merger. Our role, in case of a merger, is described in our merger policy¹⁷ which includes advising the Government and merger authorities.

¹⁷ <https://www.ofgem.gov.uk/sites/default/files/docs/2010/05/merger-policy-statement.pdf>

Our approach to determining whether or not to grant consents

2.16. In determining whether to grant our consent under SSC A27 of the gas transporter licence, we would need to have regard to our statutory objectives and duties, as well as our general public law duties. In deciding whether to grant consent outright, conditionally, or to refuse consent, we will make a proportionate decision that is best calculated to protect the interests of existing and future consumers in relation to gas conveyed through pipes (see our principal objective in section 4AA of the Act). In determining whether or not to grant consent to the transfer of a licence under section 8AA of the Act, we apply the same criteria as we would apply if we were deciding to grant a corresponding licence to the transferee.

Role of Secretary of State's for Energy and Climate Change

2.17. The Secretary of State for Energy and Climate Change (SoS) also has a role in relation to proposed transfer of assets and gas distribution licence from NGG to NewCo.

2.18. Where the transportation asset comprises a significant part of the gas conveyance system in Great Britain, the licensee must provide the SoS with 60 days' notice of its proposed transfer. The SoS has 30 days within which to decide whether to veto the proposal (see SSC A27.11 of the gas transporter licence).

2.19. The Authority is required to give at least 28 days' notice to the SoS of any proposal to modify the licence upon its transfer (section 8AA(7)(b) of the Act). The SoS can veto the imposition of such a modification (section 8AA(8) of the Act).

2.20. The SoS's written consent is also required for transfer of a gas distribution licence pursuant to SSC A45.1 of the gas transporter licence. Any decision by the Authority to consent to the transfer of the distribution licence will therefore be subject to the SoS giving its written consent to the transfer of the gas distribution licence.

Health and Safety Executive role

2.21. Regulation 3 of the Gas Safety (Management) Regulations 1996 provides that *"no person shall convey gas in a network unless ... he has prepared a safety case ... and that safety case has been accepted by the Executive"*. In other words, before NewCo can operate as a gas transporter, it must prepare a safety case, submit it to the Health and Safety Executive (HSE) and have it accepted by the HSE.

3. Identified issues

Chapter summary

This chapter sets out the issues we have identified in relation to the consents that we would need to give to allow the transfer of the assets and distribution licence to National Grid Plc (NG)'s subsidiary (NewCo) in preparation for the proposed sale.

Question 1: What is your view as to which entity, and therefore licence should hold the BMPOLR obligations and why, in the event that the proposed asset and licence transfer takes place?

Question 2: Do you have any comments in relation to the Xoserve arrangements as a result of the proposed hive across of National Grid Gas Plc (NGG)'s gas distribution business to NewCo?

Question 3: Do you have any comments on the impact of the proposed hive across on the Joint Office arrangements?

Question 4: Do you have any comments in relation to the provision of the 0800 emergency number in the event that the proposed asset and licence transfers take place?

Question 5: What are your views on the need for compliance requirements (additional to those of other relevant gas transporters) in NGG's gas transmission licence and in NewCo's gas distribution licence in the event that the proposed asset and licence transfers take place?

Question 6: Are there any other concerns or issues regarding NGG's obligations potentially affected by the proposed hive across that you would like to raise?

3.1. To facilitate the proposed hive across, we understand from NG that it has developed transitional roadmaps (TRMs) for each work stream associated with the proposed segregation of the distribution and transmission businesses. The objective of the TRMs is to provide direction on NGG's activities to create two standalone businesses whilst maintaining operational efficiency, minimising disruption to staff, customers and stakeholders, and ensuring the gas networks are operated in a safe and reliable manner at all times. NGG claims that these work streams will enable it to create a standalone company ready for hive across and subsequent proposed majority share sale.

3.2. We understand from NG that the focus of the TRMs is on people, processes, contracts, assets and information systems. Where services cannot be separated in advance of hive across, NG proposes to enter into transitional service agreements (TSAs) between NGG and NewCo. Where services cannot be separated in an efficient manner NGG and NewCo will enter into service level agreements (SLAs) to retain scale and other economies.

3.3. As already noted, we want to maintain the integrity of our price controls and ensure the relative interests of the transmission and gas distribution network (GDN) consumers are fully protected. Accordingly, we would continue to work with NG to understand the proposed allocation of assets between the transmission and distribution licensees.

3.4. We set out below obligations on NGG that we have identified, which, in the event of the proposed hive across, might affect other industry stakeholders, or which may need to change as a result. For each, we describe the obligation or issue, summarise NG's proposals and the responses they received from stakeholders through its consultation (where NG consulted on it) before setting out our initial view. The obligations considered in this chapter are in relation to:

- Backstop Meter Provider of Last Resort (BMPOLR);
- Xoserve;
- Joint Office of Gas Transporters (Joint Office);
- 0800 Gas Emergency number; and
- Legal entity separation and compliance officer role.

NG's stakeholder consultation on proposed sale

3.5. On 16 February 2016, NG opened a three-week Stakeholder Consultation¹⁸ 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.

3.6. NG's document highlighted and invited comments on four specific areas (Joint Office of Gas Transporters, BMPOLR, 0800 Gas Emergency number, and Xoserve), and asked whether anything else should be taken into account. NG has since published a stakeholder Response Document,¹⁹ which sets out its proposals for next steps, including in relation to the four areas they previously noted.

3.7. NG's proposals, stakeholders' responses and our initial views on each of these areas are considered below.

BMPOLR

3.8. Each GDN company has an obligation in its licence to provide a meter to domestic premises within its geographical boundary, where requested by a supplier. This obligation and the terms on which the associated services are provided are contained in Standard Special Condition (SSC) D17 (Provision and Return of Meters),

¹⁸ NG Stakeholder Consultation:
<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=45406>

¹⁹ NG Response Document:
<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934819>

SSC D18 (Provision of Metering and Metering Related Services), and SSC D19 (Non-discrimination in the Provision of Metering Activities) of the gas transporter licence. This Meter Provider of Last Resort (MPOLR) obligation relates to traditional domestic meters, and not to smart meters. The obligation to provide installation and meter asset management at the request of the supplier (SSC D17.1, D17.1A and D17.2) ceases once the New and Replacement Obligation (NRO) comes into effect²⁰ or at a date directed by the Authority. The other obligations relating to meter provisions (the rest of D17, D18 and D19) will cease in line with suppliers' obligations to roll out smart meters on 31 December 2020²¹, or at a date determined by the Authority.

3.9. In the case of NGG there is an additional obligation in its gas distribution licence requiring it to act as a BMPOLR across all of Great Britain, as set out in Special Condition (SC) 5A (Provision of Meters) and SC 5B (Provision of Terms). This obligation requires NGG to meet any reasonable request by a relevant GDN to provide, install and maintain a traditional domestic gas meter. This obligation was introduced from 1 April 2014, and ceases once the NRO comes into effect. The rationale for the introduction of BMPOLR, described in our July 2012 policy decision²², was to improve the provision of metering services in the transition to smart meters, particularly where a GDN does not have significant metering capability.

3.10. Under both the MPOLR and BMPOLR obligations, the provision of traditional meters needs to be through a meter asset manager. Currently, National Grid Metering Limited (NGML) provides services to NGG in fulfilling NGG's BMPOLR obligation. NGML manages the supplier relationship.

NG's consultation and stakeholders' responses

3.11. NG proposed two options in its Stakeholder Consultation document regarding who might hold the BMPOLR obligation following any proposed hive across:

- **Option one:** BMPOLR is retained within NGG by removing it from NGG's distribution licence and transferring it to NGG's transmission licence. NG stated that this option involves the least change to the existing contracts that NGG has with suppliers. NG expects that NGML will continue to provide services to NGG (as now), albeit in fulfilment of an obligation that would then be in the transmission licence.
- **Option two:** BMPOLR is retained in gas distribution licence of NGG, which is transferred to NewCo. The new entity (ie NewCo) would then carry the BMPOLR obligation. NG state that this option will require changes to the metering contracts to enable NewCo to discharge its obligation.

²⁰ This date will be designated by the Secretary of State by direction under standard condition 33.6 of the gas supply licence. DECC's intention is for the NRO to come into effect in mid-2018: <https://www.gov.uk/government/consultations/smart-metering-rollout-strategy>

²¹ The date specified in standard condition 33.1 of the gas supply licence.

²² Decision and further consultation on the regulation of traditional gas metering during the transition to smart metering, Ofgem, July 2012. <https://www.ofgem.gov.uk/sites/default/files/docs/2012/07/final-policy-decision-document-25-07-12.pdf>

3.12. NG preferred option one, as it required least material change to commercial arrangements and also ensured that all GDNs have the same obligations for metering. It also noted in their consultation document that "*contracting parties and hence accountability is expected to remain as they are today*" (pg 9).

3.13. A majority of stakeholders who expressed a preference on this issue favoured option one, mainly citing that it involved least change. One respondent expressed a preference for option two, on the grounds that the BMPOLR obligation does not "*naturally sit*" in the transmission business. Another respondent thought there was insufficient detail to make an informed decision.

3.14. In its Response Document, NG confirmed its intention to seek the Authority's approval to implement option one - transferring the BMPOLR obligation to NGG's gas transmission licence.

Our initial view

3.15. If hive across goes ahead, we consider option one is preferable. This option has the BMPOLR obligation being retained by NGG, by transferring it into NGG's transmission licence (see Chapter 4 for details of the proposed licence modifications). This current preference is based on our understanding that this option would involve least change for stakeholders and thereby minimise the risk of disruption for end consumers. It therefore would ensure that the interests of the existing and future gas consumers are protected.

Question 1: What is your view as to which entity, and therefore licence should hold the BMPOLR obligations and why, in the event that the proposed asset and licence transfer takes place?

3.16. We have also issued a statutory consultation²³ today to amend NGG's transmission licence to provide us with the power to maintain BMPOLR obligations on NGG. These proposed amendments are merely preparatory, in the event that NG receives the relevant consents required to transfer NGG's gas distribution assets and licence to NewCo. Making the licence modifications proposed in the statutory consultation now gives us the flexibility to place the obligation on NGG (subject to the consultation on BMPOLR as set out above) without any delay or loss of protection to consumers if we conclude that is appropriate.

²³ [Statutory Consultation on proposed new standard special conditions and special conditions in National Grid Gas plc's National Transmission System \(NTS\) gas transporter licence](#)

Xoserve

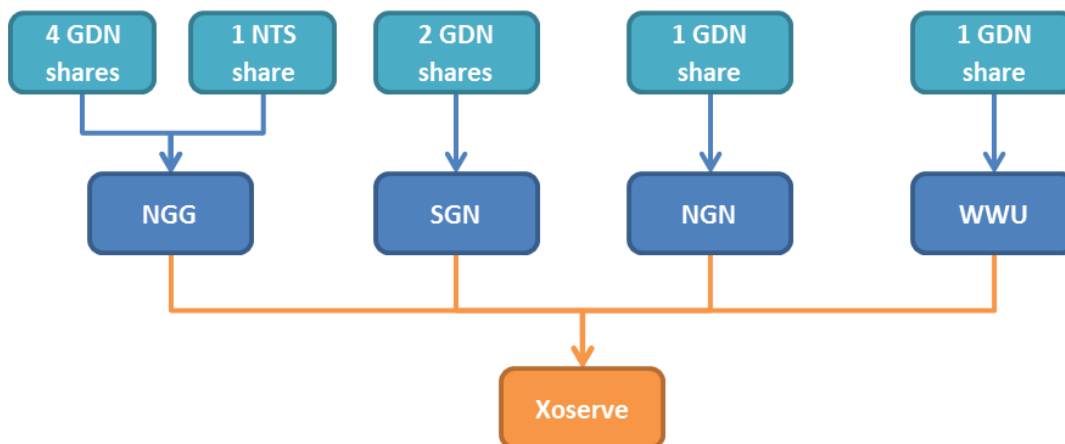
Current obligation

3.17. Following completion of distribution network sales in 2005, the gas transporters (GTs) were provided with a licence obligation (SSC A15) to appoint an agency (the "GT Agent") for the common provision of certain services and systems. This obligation was satisfied through the creation and appointment of Xoserve as the GT Agent in 2005. Xoserve operates information systems and support centres to deliver common services and systems. The range of centralised gas transportation services provided by the GT Agent is defined in the GTs' Uniform Network Code (UNC) and licences.

3.18. Xoserve is jointly owned by the GTs, with National Grid's transmission business holding a stake of 11 per cent, NGG distribution 45 per cent, Scotia Gas Networks (SGN) 24 per cent, Northern Gas Networks (NGN) 10 per cent and Wales and West Utilities (WWU) 10 per cent. The balance of shares reflects the size of the GTs (i.e. the volume of services each GT takes from Xoserve) the level of exposure and liability of each GT company in the event of service failure and the respective requirement to finance Xoserve's activities. The ultimate parent company of Xoserve is National Grid plc which remains its majority owner.

3.19. Ownership of Xoserve is split in accordance with the Xoserve Shareholders' Agreement. The shareholder agreement stipulates that Xoserve is split into equal shareholdings between the nine licence holders; eight GDNs and one transmission (NTS). The arrangement is demonstrated in Figure 5 below.

Figure 5: Current Xoserve governance structure

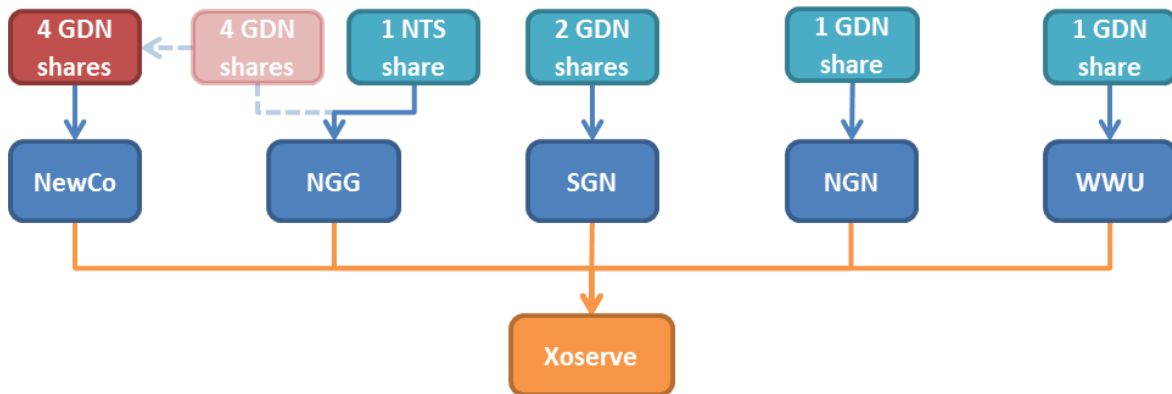


NG's consultation and stakeholders' responses

3.20. In its Stakeholder Consultation NG stated that "there will be no impact to Xoserve or the services it provides as a result of the Gas Distribution Sale" (pg 9).

3.21. NG proposed to transfer their four GDN shareholdings in Xoserve to NewCo once the assets and licence of NGG's distribution transfer (ie at hive across were this to take place). Were hive across to occur NGG's GDN shares would become deferred shares (with no ownership rights over Xoserve), while NewCo would be issued with the same number of GDN shares previously held by NGG. Figure 6 below shows the resulting Xoserve ownership structure under the NG proposal.

Figure 6: Ownership structure post-hive across



3.22. No stakeholder who responded to this issue expressed concern that the services provided by Xoserve would be materially impacted by the proposed changes. Some respondents did, however, raise additional points. One respondent expressed its view that NewCo should engage in Xoserve's Funding, Governance and Ownership (FGO) programme in the same capacity as NG has to date. Two respondents requested further clarification on the proposed staff arrangements and agreements to be re-signed, respectively, as a result of the changes being proposed.

3.23. In its Response Document, NG confirmed its understanding that no change would be needed to the distribution or transmission licences in relation to Xoserve. NG proposes that NewCo would accede to the agency services agreement (ASA)²⁴ at the time the licence transfer occurs.

3.24. NG further confirmed that it planned to apply the ownership structure changes in line with the proposal in its Stakeholder Consultation. NG noted that the new shares being issued to NewCo will be subject to NewCo acceding to the required industry commercial arrangements including the Shareholders' Agreement, a consortium Deed of Adherence and the ASA.

²⁴ SSC A15 (Agency) of the gas transporters licence requires the licensees, to have entered into an agency services agreement (ASA) with the other relevant gas transporters providing for the common provision of services and systems

Our initial view

3.25. Our current view is that NewCo should discharge the obligations in relation to the gas distribution business with respect to Xoserve and that no changes are needed to the distribution or transmission licences.

3.26. We note that NewCo will need to accede to the ASA. We believe the transfer of NGG's shares attributable to the gas distribution business to NewCo is a suitable and reasonable proposal.

3.27. Our view is that there should be minimal impact to the services provided by Xoserve (including NG's support for the implementation of project Nexus and FGO programme) as a result of the proposed hive across and proposed subsequent share sale. Consequently, consumers are unlikely to experience any impact as a result of the hive across in relation to Xoserve.

Question 2: Do you have any comments in relation to the Xoserve arrangements as a result of the proposed hive across of NGG's gas distribution business to NewCo?

Joint Office of Gas Transporters

Current obligation

3.28. SSC A12 of the gas transporter licence requires the licensees to have in place joint governance arrangements (JGA). These arrangements relate to the administration and modification of the UNC. SSC A12 requires the licensees to enter into a JGA Agreement (JGAA) to provide for the JGA and that changes are only made to the JGAA with the Authority's consent (or deemed consent).

National Grid's consultation and stakeholders' responses

3.29. In the event of a hive across, NG's view is that no change would be required to the existing JGA licence conditions and NG anticipated no change in respect of NGG's transmission business role in the JGAA. However, at the point at which the assets and licence of NGG's distribution business would transfer to NewCo, NGG would cease to be party to the JGAA in respect of its distribution activities and NewCo would become a party to the JGAA. NG stated that existing resource commitments of NGG to the Joint Office in relation to its distribution business would pass to NewCo unchanged. It anticipates no change in the services provided by the Joint Office as a result of the proposed hive across.

3.30. In general, stakeholders who responded to NG's question regarding the Joint Office were in agreement with the proposed changes to the JGAA. Several respondents did, however, raise additional points. These included the risk from any resulting changes to staff in the Joint Office, the adequacy of the level of resources

currently in the Joint Office (and their independence), and the appropriateness of the funding arrangements.

3.31. In its Response Document, NG confirmed its view that "*there will be no change to the existing obligations for the provision of the Joint Office, this extends to the arrangements for the resourcing of the Joint Office.*" It also confirmed that at the time of the proposed hive across, there would be no change to the individuals it has seconded to the Joint Office.

Our initial view

3.32. As a result of a potential hive across, one party to the JGAA (NGG in regard to its gas distribution network) will be removed and another (NewCo), with the same obligations, will become party to the JGAA. No other change is envisaged to the JGAA. In the event that changes to the JGAA are proposed, they are subject to our consent.

3.33. Overall, we do not see any material change arising in the event of hive across on the JGA nor, therefore, on consumers.

Question 3: Do you have any comments on the impact of the proposed hive across on the Joint Office arrangements?

0800 Gas Emergency Number

Current obligation

3.34. Regulation 7(1) of the Gas Safety (Management) Regulations 1996 (GS(M)R 1996) provides "*it shall be the duty of British Gas plc to provide a continuously manned telephone service (which shall be contactable within Great Britain by the use of one telephone number) for enabling persons to report an escape of gas from a network or from a gas fitting supplied with gas from a network.*" This duty is now held by NGG, as successor to British Gas plc. To comply with their legal duty NGG operate a call receipt and management service for the reporting of gas emergencies, but not the provision of an emergency engineer, which is managed by each gas transporter. Currently, NGG's distribution business provides this nationwide call service on behalf of all gas transporters.

3.35. With NGG's proposals for the creation of a new legal entity for their gas distribution business (ie NewCo), the GS(M)R 1996 duty would stay with NGG (as the successor to British Gas plc). NGG have argued that as the service currently sits in their gas distribution business, and around 80% of the calls received are associated with emergencies stemming from the distribution networks, their preferred option would be for the service to remain with NewCo. As the GS(M)R duty would remain with NGG, the Health and Safety Executive (HSE) has been consulted on a way forward which transfers the duty to NewCo through the granting of exemptions to

certain requirements of GS(M)R, which the HSE, as an enabling regulator, is prepared to consider.

3.36. SSC A8 (Emergency Services and Enquiry Service Obligations) of the gas transporter licence requires the licensee to establish (or procure the establishment), operate and maintain a single continually manned telephone service, in co-ordination with all other gas transporters, for emergency services. The condition is not prescriptive as to who provides this service, but does require the licensee not to discriminate (SSC A8 (4)) or restrict, distort or prevent competition (SSC A8(5)). Under SSC D10 (Quality of service standards) of the gas transporter licence, the licensee needs to meet certain standards for this service.²⁵

National Grid's consultation and stakeholders' responses

3.37. In its Stakeholder Consultation, NG proposed that the duty for the provision of the 0800 emergency service number would be transferred from NGG to NewCo were hive across to take place. This was because, as NewCo will hold the "*the assets, people, systems and contracts*" to provide the service, it results "*in no change to the way that the service is provided today and therefore avoids any risk that might arise through changing existing arrangements*". However, it would require changes to NGG's safety case for their remaining gas transmission business and a new safety case for NewCo, both of which would need to be submitted to, and accepted by, the HSE. We understand NG has been in discussion with the HSE regarding this service.

3.38. NG also commented that it was discussing with the HSE "*creating flexibility for future changes in the duty holder, so that the current limitation in GS(M)R is removed*".

3.39. Of the stakeholders responding to NG's question ("*Do you believe that the duty to provide the 0800 number should remain with the gas distribution business as a result of the Gas Distribution Sale? If not, why?*"):

- five expressed preference for the duty moving to NewCo;
- two expressed preference for the duty remaining with NGG;
- one expressed preference that the service is provided by a third party; and
- one expressed preference for the service not being provided by a third party.

3.40. Amongst the reasons for stakeholders' preference for the duty remaining with NGG were that it would: have a national organisation providing a national service; avoid potential discrimination issues; and ensure protection against further restructuring or break up of the GDNs.

²⁵ E.g. answering 90% of calls within 30 seconds, calls being answered by an adequately trained person, and in 97% of cases attending uncontrolled gas escapes within one hour (and within two hours for controlled gas escapes).

3.41. One respondent stated it was difficult to express a view without more information, and another stated that NG did not set out its rationale for the preferred approach. Another respondent who expressed a preference for the duty moving to NewCo did so "*in the absence of any other tangible alternatives*".

3.42. NG's Response Document confirmed NG's view that there would be no change to the 0800 111 999 number (in response to concern expressed by some stakeholders) were to be made²⁶, and emphasised that "*[t]here will be clear accountability for delivery of the service at all times.*" NG concluded its view that transferring the duty to NewCo would be the option with the least change and that other options (eg a new call centre or NGG contracting the service from NewCo) would involve introducing unnecessary risk.

Our initial view

3.43. The Authority's consent is not required for changes to the provision of the 0800 Gas Emergency service number. However, NewCo (as well as NGG and other gas transporters) would continue to be subject to SSC A8 regarding emergency services obligations. Furthermore, changes associated with the safety case are subject to acceptance by the HSE. We propose that, if we were to give consent, our consent to the transfer of assets and of the distribution licence would be conditional on the HSE's acceptance of the safety cases (see Chapter 4 for details).

Question 4: Do you have any comments in relation to the provision of the 0800 emergency number in the event that the proposed asset and licence transfers take place?

Legal entity separation and compliance officer

Current obligation

3.44. As part of the 2005 sale process, we decided that it would not be appropriate to require the legal separation of NGG's retained GDNs from NGG's transmission business. Instead, as well as requiring structural separation, we put in place licence conditions that were intended to deliver many of the benefits of legal separation. Currently, there are conditions in NGG's distribution and transmission licences, not replicated in other gas transporter licences, which are a result of these licences being held in the same legal entity. These comprise:

- Standard Conditions (SCs) in the distribution licence:
 - 4E (Undertaking from ultimate controller concerning non-discrimination between the Distribution Network transportation activity and the NTS transportation activity);

²⁶ SSC A8 (7) requires the licensee to "*inform users of the service of any change to the telephone number of the service ... as soon as is practicable prior to such change becoming effective.*"

- 4F (Separation of NTS and Distribution Network Businesses); and
- SCs in the transmission licence:
 - 10A (Undertaking from ultimate controller concerning non-discrimination between the NTS Transportation Owner Activity and the Distribution Network Transportation Activity);
 - 10B (Separation of NTS and Distribution Network Businesses); and
 - 10C (Appointment and duties of the business separation compliance officer).

3.45. These conditions are intended to ensure that there would be no discrimination in favour of a related party (ie to prevent NGG gas transmission from discriminating against the GDNs it sold, in favour of those it retained).

3.46. Of the above conditions, 4E, 4F, 10A and 10B specifically reference and apply where a distribution licence and transmission licence are held by the same legal entity. Provided hive across takes place, at the point of hive across, the transmission and distribution licences would be held by different legal entities and these conditions will cease to have effect. However, SC 10C does not explicitly reference licences being in the same legal entity and will continue to have effect.

3.47. SC 10C requires the licensee to appoint a competent person, as well as the establishment of a compliance committee to oversee its work, to facilitate compliance with the following licence conditions:

- SSC A6 (Conduct of the Transportation Business);
- SC 10A (Undertaking from ultimate controller concerning non-discrimination between the NTS Transportation Owner Activity and the Distribution Network Transportation Activity);
- SC 10B (Separation of NTS and Distribution Network Businesses); and
- SSC A35 (Prohibition of cross-subsidies).

3.48. Under SSC A34 (Appointment of a Compliance Officer), there is a requirement for a compliance officer with similar tasks and duties as to those in SC 10C. However, there are two minor differences between SSC A34 and SC 10C: (1) the scope of SSC A34 does not include SSC A6, but SC 10C does; and (2) SC 10C includes for a compliance committee to provide oversight to the compliance officer, but there is not an equivalent compliance committee for the compliance officer under SSC A34.

Our initial view

3.49. These SCs were intended to replicate the benefits of legal separation. In the event hive across takes place, legal separation will have occurred and these conditions would largely cease to be in effect. Provisions would remain within the licence to protect against discriminatory behaviour. In particular, SSC A6 requires the licensee to conduct its business in a manner best calculated to secure that unfair commercial advantage *is not* obtained, particularly as a result of preferential or discriminatory arrangements, and SSC A35 prohibits cross-subsidies. This cross-

subsidy condition would remain subject to monitoring by a compliance officer (under SSC A34, as noted above).

3.50. We recognise that the need for protection against undue discrimination in favour of a related party does not evaporate with legal separation if the party remains related after that separation. Our initial view is that there remains merit in retaining the underlying provisions of the SCs in NGG's transmission licence (10A, 10B and 10C) and distribution licence (4E and 4F) with minor wording changes to ensure they apply to activities not within the same legal entity but nonetheless within a related entity.

Question 5: What are your views on the need for compliance requirements (additional to those of other relevant gas transporters) in NGG's gas transmission licence and in NewCo's gas distribution licence in the event that the proposed asset and licence transfers take place?

Other issues

Question 6: Are there any other concerns or issues regarding NGG's obligations potentially affected by the proposed hive across that you would like to raise?

4. Conditions for consent

Chapter summary

This chapter provides a description of the conditions that we consider might be in the interests of consumers to impose were we to consent to asset transfer.

Question 7: Do you have any comments on the Authority's proposed conditions for the asset transfer, or on any other conditions you would like to raise?

4.1. As noted above in Chapter 2, the Authority has the power to grant consent for the transfer of assets and to impose conditions subject to which this consent could be given in accordance with the terms of Standard Special Condition (SSC) A27 of the gas transporter licence. Any such conditions would need to further the Authority's principal objective under the Gas Act 1986 (the Act) and statutory duties. We anticipate that there are several conditions that might be in the interests of consumers to impose were the consent to the transfer of assets to be given. We describe these in this chapter.

4.2. It should be noted that we are yet to receive the notice from National Grid Gas Plc (NGG) relating to the proposed transfer of assets to a new subsidiary of NG (NewCo), which may provide us with further details of the proposed disposal of assets. In the event that more material information emerges, these conditions may change and the need for other conditions may arise. We would consider these once we have received NGG's application.

4.3. The fact that we are consulting on these possible conditions to the consent 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.

4.4. The proposed conditions, subject to which consent could be given, would fall into two broad categories on NGG: conditions precedent, which must be satisfied before the proposed hive across can occur; and conditions subsequent, which must be satisfied after hive across occurs but before the proposed majority sale of shares in NewCo can occur.

Conditions precedent

Condition in relation to Secretary of State (SoS) for Energy and Climate Change's power to veto asset transfer

4.5. Where the transportation asset comprises a significant part of the gas conveyance system in Great Britain, the licensee must provide the SoS with 60 days' notice of its proposed transfer. The SoS has 30 days within which to decide whether to veto the proposal (see SSC A27.11 of the gas transporter licence).

4.6. One of the conditions therefore would be that the SoS has not vetoed the asset transfer.

Health and Safety Executive (HSE) approval of safety cases

4.7. A gas conveyor cannot operate in the United Kingdom without a safety case accepted by HSE. We propose to require that HSE has accepted the operational safety case for both NewCo and NGG prior to the proposed hive across.

4.8. It will also be necessary that the HSE has issued Gas Safety (Management) Regulations exemption certificates to NGG for obligations relating to the 0800 Gas Emergency number were hive down to occur.

Proposed transfer of the distribution licence

4.9. To ensure that NewCo would have the right to operate the distribution network legally, the company would have to concurrently obtain a gas distribution licence when it would receive the assets. This licence would be obtained through a transfer of the distribution licence currently held by NGG to the wholly owned subsidiary of NG (ie NewCo) under section 8AA of the Act.

4.10. Section 8AA of the Act requires that the Authority consents to the transfer of the licence. The Secretary of State has the power to veto the Authority's consent under section 8AA of the Act and his prior written consent to the licence transfer is also required under SSC A45 of the gas transporter licence. We propose to require that NGG has obtained consent from both the Authority and the Secretary of State in relation to the transfer of the distribution licence prior to hive across taking place.

Hive across of the gas distribution business not to occur before a date nominated by the Authority

4.11. We would impose a condition that the hive across cannot occur before a date nominated by the Authority in its decision letter. This is to ensure a smooth transition from NGG to the wholly owned subsidiary on the same day nominated in any section 8AA consent under the Act

Allocation of assets, services and obligations

4.12. We would require assurance from NGG that the allocation of assets, services and obligations would be balanced between the distribution and transmission licensees. As regulated companies, each company will be allocated funding to finance

its activities, of which a proportion will be funded through customer bills. As the independent regulator, we would require assurance from NGG that the proposed allocation of assets between the distribution and the transmission licensees, together with all the other associated arrangements, would protect the interests of both consumer groups. For example, the allocation of legacy obligations such as pension schemes will need to be appropriately split between the two businesses.

Uniform Network Code (UNC) changes

4.13. NGG has identified an initial list of changes that would be required to the UNC as a consequence of the proposed hive across. The changes would primarily relate to where NGG is treated as a single entity representing both the transmission and distribution businesses in the UNC. It would be necessary to amend the Transportation Principal Document such that NGG is the owner and operator of the NTS only and the new wholly owned subsidiary (ie NewCo) is the owner and operator of the gas distribution networks (GDNs). These would be progressed through the usual UNC modification process. The proposed modifications would be submitted to a modification panel set up by the Joint Office of Gas Transporters. The panel would consult on the proposed changes prior to making a decision on whether to approve the modifications.

4.14. In addition to the modifications to the UNC, NewCo would need to prepare an Individual Network Code (INC) and shipper framework agreement. It would be necessary for shippers to sign the new shipper framework agreement prior to hive across to ensure the new INC is binding on the date of hive across. It would also be necessary for NewCo to accede to the Transporter's Framework Agreement prior to hive across.

4.15. As a condition of consent, we anticipate requiring NG to satisfy the Authority that the necessary changes to the UNC have been proposed and the modification process is completed prior to hive across, thereby implementing the proposed changes at the time of hive across. We also intend to require NGG to have prepared an INC for NewCo and ensure that the relevant shippers have signed the new shipper framework agreement prior to hive across.

Other consents

4.16. NGG has identified a number of other consents, derogations, directions and determinations (apart from the consent to disposal of assets and licence transfer) that may be required as a part of the sales process. A number of these consents relate to the financial transactions and restructuring that would be required to give effect to the proposed sale.

4.17. The Authority will separately consider each of the requests for consent, directions, determinations and derogations. In deciding whether or not to grant these consents, the Authority will make decisions so far as to further its principal and have regard to its statutory duties. We would require the appropriate consents to be in place.

Evidence of conditions being met

4.18. It would be NGG's responsibility to submit to the Authority evidence that the conditions precedent to consent to transfer the assets have been met. We would require NGG to submit this evidence in writing no less than 7 days before the nominated hive across date. The Authority will then make a decision on whether the evidence submitted meets the requirements stated in the decision document.

Condition subsequent

Other regulatory, commercial or operational changes

4.19. NGG shall consent to any licence modifications and implement any other regulatory, commercial or operational changes following hive down that the Authority considers are necessary in order to ensure that the interests of customers are protected.

Material change to information

4.20. We would impose a condition that NGG shall notify the Authority immediately if it becomes aware of any material change to information on the basis of which consent was granted.

Question 7: Do you have any comments on the Authority's proposed conditions for the asset transfer, or on any other conditions you would like to raise?

5. Proposed licence changes

Chapter summary

This chapter provides a description of the proposed licence amendments we have decided to consent to hive across.

Question 8: Do you have any comments on the detail of the proposed draft licence amendments?

5.1. As described in Chapter 2, our role in stage 1 (hive across) of the proposed sale also includes considering whether to consent to transfer of distribution licence from National Grid Gas Plc (NGG) to National Grid Plc (NG)'s new subsidiary (NewCo) (under section 8AA(1) of the Gas Act 1986 (the Act)). This consent can be given subject to modification being made to the distribution licence (section 8AA(4) of the Act). The Act requires the Authority to consult for a minimum of two months on the proposed transfer and modification of the distribution licence. Should the Authority consent to the transfer and modification of the distribution licence, the Authority would also consult on whether any consequential changes would need to be made to NGG's National Transmission System (NTS) gas transporter licence (under section 23(2) of the Act).

5.2. In this chapter, we describe the proposed licence amendments required to put into effect the arrangements described in Chapter 3. These proposed amendments include an assumption that the options described in Chapter 3 proceed based on our initial views. This assumption is made without prejudging the outcome of this consultation, which will be informed by stakeholders' responses and our consideration of all relevant information. Consequently, these proposed amendments are subject to change. The proposed licence modifications include some other minor amendments, eg to correct outdated references.

5.3. We consider that it is important we give stakeholders a complete view of the potential changes and seek their initial views to the proposed licence changes through this consultation. It should also be noted that we expect to receive a request from NGG for transfer and modification of the distribution licence, following the Authority's consent to the proposed transfer of assets, which may provide us with further details of the proposed disposal and modification of licence. In the event that more material information emerges, these licence conditions may change and the need for other licence conditions may arise. We would consider these once we have received NGG's request. Upon the receipt of this request, we would issue a statutory consultation on these changes at a later date.

5.4. Appendices to this document contain the proposed draft amendments to the licence conditions, based on the issues we have identified. Specifically these amendments are:

- Appendix 3 details the proposed amendments to transmission and distribution licences if we were to decide that the Backstop Meter Provider of Last Resort (BMPOLR) obligations should remain with NGG; and
- Appendix 4 details other proposed licence amendments, relating to:
 - Distribution Network Revenue Restriction Provisions;
 - NTS Licence: Calculation of allowed pass-through items.

Metering licence condition modifications

5.5. In Chapter 3, we described the options for where the BMPOLR obligation might reside. On the assumption that option one is pursued, i.e. that the obligation would remain with NGG post-hive across and is, therefore, transferred to its transmission licence, the following licence modifications are proposed:

- inclusion of appropriate conditions, broadly equivalent to Special Condition (SC) 4D, 5A and 5B, and Standard Special Condition (SSC) D13, D14, D16, D17, D18 and D19, in NGG's transmission licence;
- removal of SC 5A and 5B from the distribution licence;
- amendment of SC 11A of the transmission licence to cater for the disapplication of the Relevant Metering Special Condition (which would be introduced into the transmission licence via the amendments described in the first bullet); and
- removal of reference to NGG's gas distribution networks. SSC D17.9 defines NGG, including reference to its gas distribution networks. As, at hive across, NGG will no longer own any GDNs, it is proposed that the reference to NGG's gas distribution networks is removed.

5.6. Details of the proposed inclusions to NGG's transmission licence (summarised in the first bullet point of paragraph 5.5) are the subject of a statutory consultation, which we published today as well. These documents should be therefore read in conjunction.

5.7. The licence modifications proposed in our statutory consultation, under section 23 of the Act, insert dormant BMPOLR conditions into the transmission licence, along with a "switch" to activate these dormant conditions by the way of a direction from the Authority. These dormant conditions will take effect not less than 56 days after our direction to do so is published. We would then consider whether to activate the 'switch', such that these conditions come into effect. We would only activate the conditions if we were satisfied that transferring the BMPOLR obligation to NGG's transmission licence is in the best interests of existing and future gas consumers. We are consulting herein (see Chapter 3) on which licence BMPOLR should reside in.

5.8. In addition to the above, a number of minor licence amendments are proposed:

- SSC D17 (7) cross refers to SC 33.5 of the gas supply licence. This cross reference should be to SC 33.6 of the gas supply licence; and
- SC 4A makes reference to the Competition Commission. This should be amended to refer to the Competition and Markets Authority.

5.9. Details of the proposed licence amendments described above (excluding those subject to the statutory consultation under section 23 of the Act issued in parallel with this document) are in Appendix 3.

Other proposed licence condition modifications

Distribution Network Revenue Restriction Provisions

5.10. NGG's Distribution Network Revenue Restriction Provisions are currently dealt with in a number of separate special licence conditions. Several of these licence conditions include appendices, which set out allowances or provide particular values for each of the Distribution Networks.

5.11. Although not defined, the term NGGD (implied to refer to National Grid Gas Distribution) is used in several of these appendices when referring to the four networks currently owned by NGG; i.e. NGGD EOE, NGGD Lon, NGGD NW and NGGD WM (for East of England, London, North West and West Midlands).

5.12. As, at hive across, NGG would cease to own any GDNs, it is proposed that reference is removed to NGGD. Details of the appendices to the Special Conditions which would require these changes to be made are listed in Appendix 4.

NTS Licence: Calculation of allowed pass-through items

5.13. SC 2B of the transmission licence deals with the treatment of pass-through items as part of the gas transmission revenue restriction. One pass-through item (dealt with in Part B of SC 2B) relates to business rates. As currently drafted, Part B allows NGG to recover 39.4% of the overall business rate charge on NGG (ie including gas distribution and transmission activities) from its transmission revenues.

In the event of hive across, NGG would be responsible for business rates levied on NGG in respect of the transmission business but will cease to be liable in respect of any business rates levied in respect of the distribution business (which will become the responsibility of NewCo). As a consequence, in NGG's transmission licence, the reference to 39.4% (of transmission *and* distribution business rates) would need to be deleted and reference made to the totality of business rates for transmission. Details of the proposed changes are in Appendix 4.



National Grid's sale of Gas Distribution Network business - consultation on regulatory aspects

Question 8: Do you have any comments on the detail of the proposed draft licence amendments?

6. Next steps

Chapter Summary

This chapter provides a description of the next steps in the hive across process.

6.1. An indicative process for the hive across procedure, with the steps that we would take in the procedure, is shown in Appendix 2. This process is indicative only, as it is subject to the outcome of this consultation, amongst other factors such as the consent that would need to be provided by the Secretary of State (SoS) for Energy and Climate Change under Standard Special Consent (SSC) A45.

6.2. At the closure of this consultation, we expect the following activities would take place:

- National Grid Gas Plc (NGG) submits a Standard Special Condition (SSC) A27 notice relating to the proposed asset transfer – NGG will need to submit a formal notice under SSC A27 of the distribution licence notifying us of its intention to transfer assets from NGG to a subsidiary of National Grid Plc (NewCo), describing which assets it wishes to transfer and on what date it intends to transfer the assets.
- Authority decision on whether to direct the Backstop Meter Provider of Last Resort (BMPOLR) switch and dormant conditions licence modifications, following the statutory consultation on proposed modifications to the gas transmission licence under section 23 of the Gas Act 1986 (the Act).
- Authority decision on whether to give consent under SSC A27 to the proposed asset transfer – subject to the outcome of this consultation, the Authority will decide whether to grant consent to transfer the gas distribution assets from NGG to NewCo on a specified date and will publish a conclusion to this consultation alongside its decision on consent to transfer the gas distribution assets.

6.3. The steps required to enable transfer and modification of the gas distribution licence are:

- NGG submits a request for consent to transfer and modify the distribution licence under section 8AA of the Act – subject to the consent to transfer the assets, NGG will request consent from the Authority (and the SoS and Energy and Climate Change under SSC A45) to transfer its gas distribution licence from NGG to NewCo.
- Transmission licence modifications – transfer and modification of NGG's gas distribution licence may have a knock-on impact on the transmission licence; therefore, the Authority will be required to decide whether to make consequential modifications to the transmission licence under section 23 of the Act.
- Proposed licence modification consultations – we will open parallel two-month statutory consultations on the transfer of NGG's gas distribution licence and on modifications to the transmission licence.

- Consent/decision on whether to proceed with the proposed licence modification – subject to the outcome of the statutory consultations, the Authority would make a decision on whether to consent to the proposed transfer of the gas distribution licence and will make a decision on whether to make the licence modifications which have been proposed to the gas transmission licence (including issuing a direction activating the BMPOLR switch).

6.4. Subject to the outcomes of the decisions above and NG meeting any imposed conditions to decisions made by the Authority, NG would hive across its gas distribution business to NewCo.

6.5. We welcome views from interested parties on the questions raised in this document. Responses should be provided no later than 31 May 2016. Appendix 1 sets out the details on how to respond.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Appendix 1 - Consultation Response and Questions	39
2	Appendix 2 – Indicative Process	41
3	Appendix 3 – Proposed Amendments for Metering	42
4	Appendix 4 – Other Licence Modifications	68
5	Appendix 5 - Feedback Questionnaire	77

Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 31 May 2016 and should be sent to:

Rupika Madhura
Head of Gas Distribution Policy
RIIO Gas Networks
Ofgem, 9 Millbank, London, SW1P 3GE
Email: NGGD.Separation@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Our next steps are set out in Chapter 6. Any questions on this document should, in the first instance, be directed to Rupika Madhura on NGGD.Separation@ofgem.gov.uk or on 02079017091.

CHAPTER: Three

Question 1: What is your view as to which entity, and therefore licence should hold the BMPOLR obligations and why, in the event that the proposed asset and licence transfer takes place?

Question 2: Do you have any comments in relation to the Xoserve arrangements as a result of the proposed hive across of National Grid Gas Plc (NGG)'s gas distribution business to NewCo?

Question 3: Do you have any comments on the impact of the proposed hive across on the Joint Office arrangements?

Question 4: Do you have any comments in relation to the provision of the 0800 emergency number in the event that the proposed asset and licence transfers take place?

Question 5: What are your views on the need for compliance requirements (additional to those of other relevant gas transporters) in NGG's gas transmission licence and in NewCo's gas distribution licence in the event that the proposed asset and licence transfers take place?

Question 6: Are there any other concerns or issues regarding NGG's obligations potentially affected by the proposed hive across that you would like to raise?

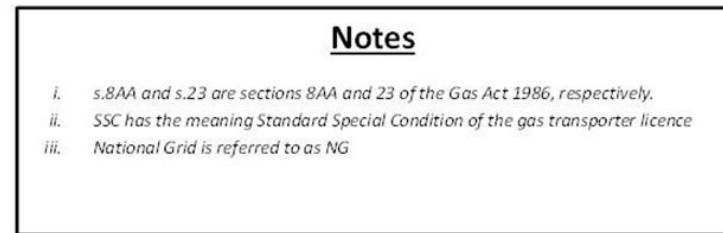
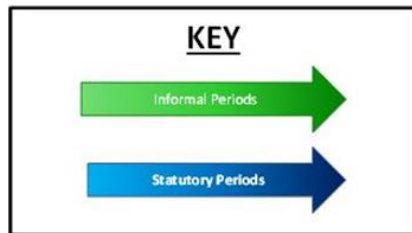
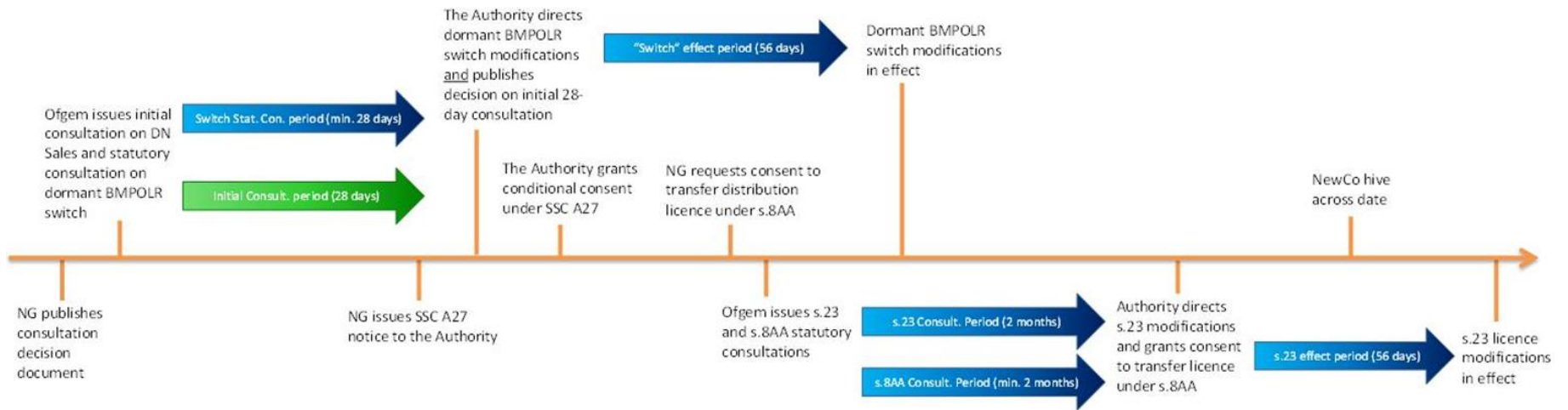
CHAPTER: Four

Question 7: Do you have any comments on the Authority's proposed conditions for the asset transfer, or on any other conditions you would like to raise?

CHAPTER: Five

Question 8: Do you have any comments on the detail of the proposed draft licence amendments?

Appendix 2 – Indicative Process



Appendix 3 – Proposed Amendments for Metering

GAS DISTRIBUTION LICENCE

Standard Special Condition D17. Provision and Return of Meters

1. Subject to paragraph 2, the licensee shall comply with any reasonable request by a relevant supplier (or a gas supplier who is about to become such a relevant supplier) to provide through a meter asset manager and install at the premises of a domestic customer a gas meter, other than:
 - (a) a gas meter capable of forming part of a smart metering system;
 - (b) an advanced domestic meter; or
 - (c) a prepayment advanced domestic meter
2. owned by the licensee and of a type specified by the supplier subject, however, to a meter of that type being reasonably available to the licensee and the supplier agreeing to pay its charges in respect of the meter.
- 1A. For the purposes of paragraph 1, “**meter asset manager**” means:
 - (a) a person approved in accordance with the Supply Point Administration Agreement as possessing expertise satisfactorily to provide meter-related services or a class or description of persons so approved (the “**relevant expertise**”); or
 - (b) an undertaking approved in accordance with the Supply Point Administrator Agreement as having staff possessing the relevant expertise and for the purposes of this definition,

- (i) **“approved in accordance with the Supply Point Administration Agreement”** means approved in accordance with it for the purposes of this condition generally and **“staff”** includes officers, servants and agents; and
 - (ii) **“meter-related services”** means the provision, installation, commissioning, inspection, repairing, alteration, repositioning, removal, renewal and maintenance of the whole or part of the Supply Meter Installation as defined in Section M, paragraph 1.2 of the Network Code of Transco plc, as at 12 July 2004, as defined within Amended Standard Condition 9 (Network Code) of Transco plc’s gas transporter licence on that date.
- 2. Paragraph 1 shall not apply
 - (a) Where:
 - (i) the premises in question are secondary sub-deduct premises; and
 - (ii) the owner or occupier of the premises has not agreed that the licensee may enter the premises for the purpose of removing the meter when the owner or occupier no longer requires the meter or the supply of gas; or
 - (b) where the licensee receives a reasonable request from a relevant supplier in accordance with paragraph 1, and the licensee submits that request within 14 days of receiving it to National Grid Gas plc to fulfil.
- 3. Where any gas meter owned by the licensee is disconnected by, or returned to, the licensee it shall promptly make an appropriate record of the details displayed on the register of the meter at the time of disconnection or return and of such other information in its possession as shall subsequently enable the identity of, and the date of disconnection or return of, the meter and the premises from which it was disconnected to be ascertained, and shall keep such a record for a period of not

less than 2 years from the date of the disconnection or return, whichever is the later.

4. Where the licensee has reasonable cause to believe that any gas meter owned by it and disconnected by, or returned to, it is or may be relevant to -

(a) any investigation, proceedings or possible proceedings relating to the alleged theft of gas by any person or to an alleged offence under paragraph 10(1) of Schedule 2B to the Act; or

(b) any dispute as to the accuracy of the meter,

the licensee shall use all reasonable endeavours to keep the meter in safe custody in the standard condition in which it was when disconnected or returned and with the register unaltered -

(i) during the period of 6 months beginning with the date on which the meter was disconnected or returned, for as long as the licensee continues to have reasonable cause to believe that the meter is or may be so relevant; and

(ii) thereafter, for as long as, to the licensee's knowledge, the meter is so relevant.

5. When the licensee receives, in connection with a proposed connection or disconnection of a meter, such a notice as is mentioned in sub-paragraph (1) of paragraph 12 of Schedule 2B to the Act or receives information in pursuance of sub-paragraph (3) of that paragraph, it shall promptly give the relevant shipper a copy thereof and furnish it with any further information relating to the meter which is requested by the relevant shipper and which the licensee either has or may readily obtain.

6. Where the record kept by the licensee under paragraph 8 of Standard Special Condition A50 (System Development Obligations) shows that a relevant supplier has supplied gas to particular premises for less than 2 years and that the supplier has not, since it began to supply gas to those premises, secured an inspection of

the meter for the purposes of standard condition 12 (Matters relating to Gas Meters) of the standard conditions of the Gas Supply licence as incorporated in its licence, the licensee shall give to the relevant shipper, for transmission to the supplier (except where the recipient of the notice is itself the supplier), not less than 4 months' notice of the date by which the next such inspection should be carried out, being a date falling not more than 2 years after the date shown in the licensee's record as the date of the last such inspection or, if later, 5 months after the licensee is informed that the supplier has begun to supply gas to the premises.

7. Subject to any direction given by the Authority, paragraphs 1, 1A and 2 of this condition shall cease to have effect on the date specified in a direction made by the Secretary of State, in respect of the installation of a Smart Metering System, in accordance with his powers under condition 33.56 (The duty in relation to replacement meters and new connections) of the standard conditions of the gas supply licence.
8. Subject to any direction given by the Authority, paragraphs 3 to 6 and 9 of this condition shall cease to have effect on the date specified in condition 33.1 of the standard conditions of the gas supply licence (the date by which the duty to roll out a Smart Metering System must be fulfilled).
9. For the purposes of this condition and Standard Special Condition D18 (Provision of Metering and Meter Reading Services):

advanced domestic meter

has the same meaning as that provided in Condition 25B.16 (Definitions for the purposes of interoperability of Advanced Domestic Meters) of the standard conditions of the gas supply licence



National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

National Grid Gas plc	has the same meaning as that provided in Special Condition 1A (Restriction of revenue in respect of the Distribution Network Transportation Activity: definitions) of National Grid plc's gas transporter licence in respect of the distribution networks which it owns
prepayment advanced domestic meter	has the same meaning as that provided in Condition 25B.16 of the standard conditions of the gas supply licence
smart metering system	has the same meaning as that provided in Condition 1 (Definition for standard conditions) of the standard conditions of the gas supply licence

Standard Special Condition D18. Provision of Metering and Meter Reading Services

1. Before attending to any request from a supplier:
 - (a) pursuant to paragraph 1 of Standard Special Condition D17 (Provision and Return of Meters);
 - (b) in relation to the provision of metering services other than those provided pursuant to sub-paragraph (a) above); or
 - (c) in relation to the provision of meter reading services;the licensee shall provide to that supplier the terms provided for in paragraph 2.
- 1A. Where and to the extent that the licensee is required to provide services under sub-paragraph (a) of paragraph 1 above, it shall be the duty of the licensee to provide the services mentioned in that sub-paragraph on reasonable terms.
2. The terms referred to in paragraph 1 are the licensee's terms regarding;
 - (a) the date by which the services required shall be provided (time being of the essence unless otherwise agreed between the parties);
 - (b) the charges to be paid in respect of the services required, such charges (save to the extent set out in any direction under paragraph 10 or unless manifestly inappropriate):
 - (i) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 5 of this condition, or any revision thereof; and
 - (ii) to be set in conformity with the requirements of paragraphs 4 to 7 of this condition; and

- (c) such other detailed terms in respect of each of the services required as are or may be appropriate for the purpose of the agreement.
- 3. The licensee shall provide to the supplier such terms as are referred to in paragraph 2 above as soon as practicable and (save where the Authority consents to a longer period) in any event not more than 28 days after receipt by the licensee from any person of any application containing all such information as may reasonably be required for the purpose of formulating the terms of the agreement.
- 4. Except in so far as the Authority accepts otherwise, the licensee shall enter into agreements with suppliers for the provision of:
 - (a) gas meters pursuant to Standard Special Condition D17 (Provision and Return of Meters);
 - (b) metering services other than the provision of gas meters pursuant to subparagraph (a) above; or
 - (c) meter reading services,without variation to any terms provided in relation to a particular request from a supplier pursuant to paragraph 2.
- 5. The licensee shall as soon as reasonably practicable prepare statements in a form approved by the Authority setting out:
 - (a) the basis upon which charges for the provision of services of a type described in paragraph 1 will be made; and
 - (b) information relating to the other terms that will apply to the provision of each service,

in each case in such form and with such detail as shall be necessary to enable any supplier to make a reasonable estimate of the charges to which he would become liable for the provision of such services and of the other terms, likely to have a

material impact on the conduct of his business, upon which the service would be provided and (without prejudice to the foregoing) including the information set out in paragraph 6.

6. The statements referred to in paragraph 5 shall include:
 - (a) a schedule of charges for such services; and
 - (b) an explanation of the methods by which and the principles on which such charges will be calculated.
7. The licensee may periodically review the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 5 and shall, at least once in every year that this licence is in force, make any necessary revisions to such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
8. The licensee shall send a copy of the statements in accordance with paragraph 5, and of each revision of such statements in accordance with paragraph 7, to the Authority.
9. The licensee shall give or send a copy of the statements prepared in accordance with paragraph 5, or (as the case may be) of the latest revision of such statements in accordance with paragraph 7, to any supplier who requests a copy of such statement or statements.
10. The licensee may make a charge for any statement given or sent pursuant to paragraph 9 of an amount which shall not exceed the amount specified in directions issued by the Authority for the purposes of this condition based on the

- Authority's estimate of the licensee's reasonable costs of providing such a statement.
11. The Authority, having regard, in particular, to any representations made to it by the licensee and other persons may issue a direction relieving the licensee of its obligations under paragraphs 1(b), 1(c), 1A, 3 and 5 to such extent and subject to such terms and conditions as it may specify in that direction.
 12. Subject to any direction given by the Authority, this condition shall cease to have effect on the date specified in condition 33.1 of the standard conditions of the gas supply licence (the date by which the duty to roll out a Smart Metering System must be fulfilled).

Standard Special Condition D19. Non-discrimination in the Provision of Metering Activities

1. The licensee shall avoid undue discrimination and undue preference between any persons or class or classes of persons in the provision of metering activities.
2. Without prejudice to paragraph 1 and subject to paragraph 4 of this condition, the licensee shall not make charges for the provision of metering activities to any supplier or class or classes of supplier which differ in respect of any item separately identified in the statements referred to in paragraph 5 of Standard Special Condition D18 (Provision of Metering and Meter Reading Services) from those for the provision of metering activities to any other gas supplier or class or classes of supplier except insofar as such differences reasonably reflect differences in the costs associated with such provision.
3. Notwithstanding paragraph 2 of this condition, the licensee shall not make any charges in respect of metering activities in respect of any item of charge separately identified in the statements referred to in paragraph 5 of Standard Special Condition D18 (Provision of Metering and Meter Reading Services) on any supplier whose contract does not provide for him to receive the activity to which such item of charge refers.
4. The licensee shall not in setting charges in respect of metering activities restrict, distort or prevent competition in the supply or conveyance of gas.

Special Condition 4A. Disapplication of Relevant Special Conditions and Relevant Metering Special Condition

Introduction

4A.1 The purpose of this condition is to enable the Licensee to make a formal request for the disapplication of the Relevant Special Conditions or Relevant Metering Special Condition (in whole or in part) and for such provisions to be disappplied following such a request in the circumstances specified below.

Part A: Conditions are to continue subject to disapplication

4A.2 The Relevant Special Conditions or Relevant Metering Special Condition apply for as long as this licence continues in force, but will cease to have effect (in whole or in part, as the case may be) if the Licensee serves a Disapplication Request on the Authority in accordance with the provisions of Parts B and C below and:

- (a) the Authority agrees in writing to the Disapplication Request; or
- (b) the application of the Relevant Special Conditions or Relevant Metering Special Condition (in whole or in part) is terminated by a notice given by the Licensee in accordance with the provisions of Part D below.

Part B: Procedure for making a Disapplication Request

4A.3 The Licensee may ask the Authority to consent to the disapplication of the Relevant Special Conditions or Relevant Metering Special Condition (in whole or in part) by serving a "Disapplication Request" on the Authority under this condition.

4A.4 A Disapplication Request must:

- (a) be in writing and addressed to the Authority;
- (b) specify to which of the Relevant Special Conditions or Relevant Metering Special Condition (or any part or parts of them) the request relates;
- (c) provide a full statement of the Licensee's reasons for making the request;

- (d) contain such other information or analysis as the Licensee considers sufficient to enable the Authority to fully assess the Disapplication Request;
- (e) state the date that is proposed by the Licensee (which must not be earlier than the appropriate date that is mentioned in Part C below) on and after which the specified Relevant Special Conditions or Relevant Metering Special Condition (or part or parts of them) would cease to have effect (the "Disapplication Date"); and
- (f) specify the Distribution Network (or any part or parts of it) to which the request relates.

4A.5 A Disapplication Request served under this condition may be served in respect of a specified geographical area.

4A.6 If, within 28 days of receipt of a Disapplication Request, the Authority gives notice to the Licensee;

- (a) specifying further information or analysis that it reasonably considers is required in order to fully assess the Disapplication Request, and
- (b) requests the Licensee to provide that information or analysis,

the Disapplication Request shall be treated for the purposes of paragraph 4A.8 of this condition as not served on the Authority until that further information or analysis has been provided to the Authority and, if in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 4A.8 below, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

4A.7 The Licensee may withdraw a Disapplication Request at any time.

Part C: Date from which a disapplication may take effect

4A.8 Except where the Authority otherwise consents, a disapplication following the service of a Disapplication Request may not have effect until a date that is no earlier than 18 months after service on the Authority of the Disapplication Request.

Part D: Licensee's right to terminate under a Disapplication Request

4A.9 If the Licensee has served on the Authority a Disapplication Request that complies with the requirements of Parts B and C of this condition, it may subsequently give the Authority a notice (a "Disapplication Notice") that terminates the application of some or all of the provisions of this licence specified in that request:

- (a) in the circumstance described in Part E; or
- (b) in the circumstance described in Part F,

but in either case the Disapplication Notice may not take effect before the Disapplication Date or such earlier date to which the Authority may have consented under Part C.

Part E: Termination without involvement of the Competition and Markets

Authority Commission

4A.10 The circumstance referred to in paragraph 4A.9(a) above is that by the beginning of the period of six months that would end on the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under section 23(7) of the Act to modify:

- (a) the Relevant Special Conditions or Relevant Metering Special Condition (or any part or parts of them) to which the Disapplication Request applies; or
- (b) this condition so as to remove the Licensee's right to give the Authority a Disapplication Notice under paragraph 4A.9 in respect of the relevant Disapplication Request.

Part F: Termination after involvement of the Competition and Markets

AuthorityCommission

4A.11 The circumstance referred to in paragraph 4A.9(b) above is that the Authority has published a decision as described in paragraph 4A.10(a) or 4A.10(b) above and:

- (a) the Licensee has exercised its right to appeal to the Competition and Markets AuthorityCommission against that decision of the Authority as provided for by section 23B of the Act;
- (b) the Competition and Markets AuthorityCommission, acting under section 23F of the Act, has, in respect of the provision to which the Disapplication Notice relates: (i) quashed the Authority's decision, and (ii) neither remitted the matter back to the Authority under section 23E(2)(b) of the Act nor substituted its own decision for that of the Authority under section 23E (2)(c) of the Act; and
- (c) no more than 30 days have elapsed since the date on which the Competition and Markets AuthorityCommission quashed the decision in the circumstances described in paragraph 4A.11(b) above.

Special Condition 5A. Provision of Meters

~~5A.1.—This condition applies only in relation to the provision of gas meters other than:~~

- ~~(a) — a gas meter capable of forming part of a Smart Metering System;~~
- ~~(b) — an Advanced Domestic Meter; or~~
- ~~(c) — a Prepayment Advanced Domestic Meter.~~

~~5A.2.—Except in so far as the Authority otherwise consents, the Licensee shall comply with any reasonable request by a Relevant Gas Transporter, pursuant to paragraph 2(b) of Standard Special Condition D17 (Provision and Return of Meters), to provide, through a Meter Asset Manager and install at the premises of a domestic customer, a gas meter owned by the Licensee and of a type specified by the Supplier subject, however, to a meter of that type being reasonably available to the Licensee and the Supplier agreeing to pay the Licensee's charges in respect of that meter.~~

Special Condition 5B. Provision of Terms

~~5B.1—This condition applies only in relation to the provision of gas meters other than:~~

- ~~(a) — a gas meter capable of forming part of a Smart Metering System;~~
- ~~(b) — an Advanced Domestic Meter; or~~
- ~~(c) — a Prepayment Advanced Domestic Meter.~~

~~5B.2.—Where the Licensee receives a request from a Relevant Gas Transporter, pursuant to paragraph 2(b) of Standard Special Condition D17 (Provision and Return of Meters), the Licensee shall provide to the Supplier the terms provided for in paragraph 5B.4.~~

~~5B.3.—Where the Licensee is required to provide the services described in paragraph 5A.2, it shall be the duty of the Licensee to provide those services on reasonable terms~~

~~5B.4.—The terms referred to in paragraph 5B.2 are the Licensee's terms regarding:~~

- ~~(a) — the date by which the services required shall be provided (time being of the essence unless otherwise agreed between the parties);~~
- ~~(b) — the charges to be paid in respect of the services required, such charges (save to the extent set out in any direction under paragraph 5B.11 or unless manifestly inappropriate):~~
 - ~~(i) — to be presented in such a way as to be referable to the statements prepared in accordance with paragraph SB.6 of this condition, or any revision thereof; and~~

~~(ii) — to be set in conformity with the requirements of paragraphs 5B.5 to 5B.8 of this condition; and~~

~~(e) — such other detailed terms in respect of each of the services required as are
or
may be appropriate for the purpose of the agreement.~~

~~5B.5. — The Licensee shall provide to the Supplier such terms as are referred to in paragraph 5BA as soon as practicable and (save where the Authority consents to a longer period) in any event not more than 28 days after receipt by the Licensee from the Relevant Gas Transporter of any request containing all such information as may reasonably be required for the purpose of formulating the terms of the agreement.~~

~~5B.6. — The Licensee shall as soon as reasonably practicable prepare statements in a form approved by the Authority setting out:~~

~~(a) — the basis upon which charges for the provision of services of a type described in paragraph 5B.2 will be made; and~~

~~(b) — information relating to the other terms that will apply to the provision of each service,~~

~~in each case in such form and with such detail as shall be necessary to enable any Supplier to make a reasonable estimate of the charges to which he would become liable for the provision of such services and of the other terms, likely to have a material impact on the conduct of his business, upon which the service would be provided and (Without prejudice to the foregoing) including the information set out in paragraph 5B.7.~~

~~5B.7.—The statements referred to in paragraph 5B.6 shall include:~~

- ~~(a) — a schedule of charges for such services; and~~
- ~~(b) — an explanation of the methods by which and the principles on which such charges will be calculated.~~

~~5B.8.—The Licensee may periodically review the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 5B.6 and shall, at least once in every year that this licence is in force, make any necessary revisions to such statements in order that the information set out in the statements shall continue to be accurate in all material respects.~~

~~5B.9.—The Licensee shall send a copy of the statements prepared in accordance with paragraph 5B.6, and of each revision of such statements in accordance with paragraph 5B.8, to the Authority.~~

~~5B.10.—The Licensee shall give or send a copy of the statements prepared in accordance with paragraph 5B.6, or (as the case may be) of the latest revision of such statements in accordance with paragraph 5B.8, to any Supplier following a request from a Relevant Gas Transporter, pursuant to paragraph 2(b) of Standard Special Condition D17 (Provision and Return of Meters), who requests a copy of such statement or statements.~~

~~5B.11.—The Licensee may make a charge for any statement given or sent pursuant to paragraph 5B.10 of an amount which shall not exceed the amount specified in directions Issued by the Authority for the purposes of Standard Special Condition D18 (Provision of Metering and Meter Reading Services) based on the Authority's estimate of the Licensee's reasonable costs of providing such a statement.~~



~~5B.12. The Authority, having regard, in particular, to any representations made to it by the licensee, and other persons may issue a direction relieving the Licensee of its obligations under this condition to such extent and subject to such terms and conditions as it may specify in that direction.~~

~~5B.13. Subject to any direction given by the Authority, the provisions of Chapter 5 of Part E of this licence shall cease to have effect on the date specified In a direction made by the Secretary of State, in respect of the installation of a Smart Metering System, in accordance with his powers in Condition 33.5 (The duty in relation to replacement meters and new connections) of the standard conditions of the gas supply licence.~~

~~5B.14. For the purposes of Chapter 5:~~

~~Advanced Domestic Meter~~ has the same meaning as that provided in Condition 25B.16 (Definitions for the purposes of interoperability of advanced domestic meters) of the standard conditions of the gas supply' licence

~~Meter Asset Manager~~ has the same meaning as that provided in paragraph 1A of Standard Special Condition D 17(Provision and Return of



~~Meters).~~

~~Prepayment Advanced Domestic Meter~~ ~~has the same meaning as that provided in~~

~~Condition 25B.16 of the standard conditions of the gas supply licence~~

~~Relevant Gas Transporter'~~ ~~has the same meaning as that provided in~~

~~paragraph 1 of Standard Special Condition A3 (Definitions and Interpretation).~~

~~Smart Metering System~~ ~~has the same meaning as that provided in~~

~~Condition 1 (Definition for standard conditions) of the standard conditions of the gas supply licence~~

~~Supplier~~ ~~references to Supplier in this Chapter are a reference to the Relevant Supplier (as defined in Standard Special Condition A3 (Definitions and Interpretation) who has made a~~



National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

~~request, pursuant to paragraph 1 of Standard Special Condition D17, and which forms the basis of a request from a Relevant Gas Transporter to the Licensee, pursuant to paragraph 2(b) of Standard Special Condition D-17.~~

GAS TRANSMISSION LICENCE

Special Condition 1A. Definitions

Relevant Metering Special Condition means Special Condition 11H (Restriction of prices in respect of Tariff Capped Metering Activities)

Special Condition 11A. Disapplication of Relevant Special Conditions and Relevant Metering Special Condition

3. Introduction

11A.1. The purpose of this condition is to enable the Licensee to make a formal request for the disapplication of the Relevant TO Special Conditions ~~or~~ Relevant SO Special Conditions or Relevant Metering Special Condition (in whole or in part) and for such provisions to be disapplied following such a request in the circumstances specified below.

4. Part A: Conditions are to continue subject to disapplication

11A.2. The Relevant TO Special Conditions ~~and~~ Relevant SO Special Conditions and Relevant Metering Special Condition apply for as long as this licence continues in force, but will cease to have effect (in whole or in part) if the Licensee serves a Disapplication Request on the Authority in accordance with the provisions of Parts B and C below and:

- (a) the Authority agrees in writing to the Disapplication Request; or

- (b) the application of the Relevant TO Special Conditions ~~or~~ Relevant SO Special Conditions or Relevant Metering Special Condition (in whole or in part) is terminated by notice given by the Licensee in accordance with the provisions of Part D below.

5. Part B: Procedure for making a Disapplication Request

11A.3. The Licensee may ask the Authority to consent to the disapplication of the Relevant TO Special Conditions ~~or~~ Relevant SO Special Conditions or Relevant Metering Special Condition (in whole or in part) by serving a Disapplication Request on the Authority under this condition.

11A.4. A Disapplication Request must:

- (a) be in writing and addressed to the Authority;
- (b) specify which of the Relevant TO Special Conditions, Relevant SO Special Conditions or Relevant Metering Special Condition (or any part or parts of them) the request relates;
- (c) provide a full statement of the Licensee's reasons for making the request;
- (d) contain such other information or analysis as the Licensee considers sufficient to enable the Authority to fully assess the Disapplication Request;
- (e) state the date that is proposed by the Licensee (which must not be earlier than the appropriate date that is mentioned in Part C below) on and after which the specified Relevant TO Special Conditions ~~or~~ Relevant SO Special Conditions or Relevant Metering Special Condition (or any part or parts of them) would cease to have effect (the "Disapplication Date"); and
- (f) specify which part of the Transportation System the request relates.

11A.5. A Disapplication Request served under this condition may be served in respect of a specified geographical area.

11A.6. If, within 28 days of receipt of a Disapplication Request, the Authority gives notice to the Licensee:

(a) specifying further information or analysis that it reasonably considers is required in order to fully assess the Disapplication Request, and

(b) requests the Licensee to provide that information or analysis,

the Disapplication Request will be treated for the purposes of paragraph 11A.8 of this condition as not served on the Authority until that further information or analysis has been provided to the Authority and, if in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 11A.8 below, the Disapplication Date will be treated as being the earliest date that would comply with that paragraph.

11A.7. The Licensee may withdraw a Disapplication Request at any time.

6. Part C: Date from which a disapplication may take effect

11A.8. Except where the Authority otherwise consents, a disapplication following the service of a Disapplication Request may not have effect until a date that is no earlier than 18 months after the service on the Authority of the Disapplication Request.

7.

8. Part D: Licensee's right to terminate under a Disapplication Request

11A.9. If the Licensee has served on the Authority a Disapplication Request that complies with the requirements of Parts B and C of this condition, it may subsequently give the Authority a notice (a "Disapplication Notice") that terminates the application of some or all of the provisions of this Licence specified in that request:

National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

- (a) in the circumstance described in Part E; or
- (b) in the circumstance described in Part F,

but in either case the Disapplication Notice may not take effect before the Disapplication Date or such earlier date to which the Authority may have consented under Part C.

9. Part E: Termination without involvement of the Competition and Markets Authority Commission

11A.10. The circumstance referred to in paragraph 11A.9(a) above is that by the beginning of the period of six months that would end on the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under section 23(7) of the Act to modify:

- (a) the Relevant TO Special Conditions ~~or~~ Relevant SO Special Conditions or Relevant Metering Special Condition (or any part or parts of them) to which the Disapplication Request applies; or
- (b) this Condition so as to remove the Licensee's right to give the Authority a Notice under paragraph 11A.9 in respect of the relevant Disapplication Request.

Part F: Termination after involvement of the Competition and Markets Authority Commission

11A.11. The circumstance referred to in paragraph 11A.9(b) above is that the Authority has published a decision as described in paragraph 11A.10(a) or 11A.10(b) above and:

National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

- (a) the Licensee has exercised its right to appeal to the Competition and Markets Authority Commission against that decision of the Authority as provided for by section 23B of the Act;
- (b) the Competition Commission and Markets Authority, acting under section 23F of the Act has, in respect of the provision to which the Disapplication Notice relates: (i) quashed the Authority's decision and (ii) neither remitted the matter back to the Authority under section 23E(2)(b) of the Act nor substituted its own decision for that of the Authority under section 23E(2)(c) of the Act; and
- (c) no more than 30 days have elapsed since the date on which the Competition Commission and Markets Authority quashes the decision in the circumstances described in paragraph 11A.11(b) above.

Appendix 4 – Other Licence Modifications

DISTRIBUTION NETWORK REVENUE RESTRICTION PROVISIONS

The following Appendices set out allowances or provide particular values for each of the eight GDNs but, in the context of the East of England, London, North West and West Midlands Distribution Networks (i.e. those currently owned by NGG) refer to NGGD EOE, NGGD Lon, NGGD NW and NGGD WM:

- Appendix 1 to Special Condition 1B
- Appendix 1, 2 and 3 to Special Condition 1C
- Appendix 1 and 2 to Special Condition 1D
- Appendix 1, 2 and 3 to Special Condition 1F
- Appendix 1 to Special Condition 1H
- Appendix 1 to Special Condition 3B
- Appendix 1 and 2 to Special Condition 3D
- Appendix 1 to Special Condition 3E
- Appendix 1 and 2 to Special Condition 3F
- Annex A to Special Condition 4J

It is proposed that in each of the above, the reference to 'NGGD' is deleted



National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

CALCULATION OF PASS THROUGH ITEMS

NTS Licence

Special Condition 2B. Calculation of allowed pass-through items

Introduction

- 2B.1 The purpose of this condition is to provide for the calculation of the term PT_t (the allowed pass-through term) for the purposes of Part C of Special Condition 2A (Restriction of NTS Transportation Owner Revenue).
- 2B.2 The effect of the application of the PT_t term in Part C of Special Condition 2A is to ensure that the level of the Licensee's Maximum NTS Transportation Owner Revenue derived in accordance with that condition reflects certain costs that can be passed through to users.

Part A: Formula for calculation of allowed pass-through items (PT_t)

- 2B.3 For the purposes of Part C of Special Condition 2A, the PT_t term is derived in accordance with the following formula (in this condition, the "Principal Formula"):

$$PT_t = RB_t + LF_t + OPTC_t + ISA_t$$

- 2B.4 In the Principal Formula:

2B.5 RB_t 2B.6 means the business rates adjustment in Formula Year t as derived in accordance with the formula set out in Part B of this condition.

2B.7 LF_t 2B.8 means the licence fee adjustment in Formula Year t as derived in accordance with the formula set out in Part C of this condition.

2B.9 $OPTC_t$ 2B.10 means the policing cost adjustment in Formula Year t in respect of the additional costs of complying with any requirement arising under sections 85 to 90 of the Counter-Terrorism Act 2008 in respect of the provision of policing services in or around a gas facility, as derived in accordance with the formula set out in Part D

of this condition.

2B.11 ISA_t 2B.12 means the Independent Systems adjustment in Formula Year t, in respect of the recovery of costs incurred pursuant to arrangements associated with the conveyance of gas to Independent Systems, as derived in accordance with Part E of this condition.

Part B: Calculation of the business rates adjustment term (RB_t)

2B.13 For the purposes of the Principal Formula, subject to paragraph 2B.7 and 2B.8, RB_t is derived in accordance with the following formula:

$$RB_t = \left(\frac{RBA_{t-2}}{RPIA_{t-2}} - RBE_{t-2} \right) \times PVF_{t-2} \times PVF_{t-1} \times RPIF_t$$

2B.14 In the above formula for RB_t :

2B.15 RBA_{t-2} 2B.16 means the amount NTS-prescribed rates, in Formula Year t-2, of the charge incurred in respect and has the value of 39.4 per cent, or such other value as agreed in writing by the Authority, of the prescribed rates (or any equivalent tax or duty replacing them) levied on the Licensee in Formula Year t-2 in relation to its NTS Transportation Owner Activity ~~and Distribution Network Transportation Activity~~.

2B.17 RBE_{t-2} 2B.18 means the ~~NTS-prescribed rates~~ amount of the allowance in respect of the prescribed rates (or any equivalent tax or duty replacing them) in Formula Year t-2 in relation to the NTS Transportation Owner Activity, and is represented by the amount set out in Appendix 1 of this condition.

2B.19 $RPIA_{t-2}$ 2B.20 has the value given to it by Part D of Special Condition 2A.

2B.21 PVF_t 2B.22 has the value given to it by Part D of Special Condition 2A.

2B.23 $RPIF_t$ 2B.24 has the value given to it by Part D of Special Condition 2A.

2B.25 In the Formula Years 2013/14 and 2014/15 RB_t will have the value zero.

2B.26 In respect of any Formula Year t-2 in which the revaluation by The Valuation Office Agency (in England and Wales) or the Scottish Assessors Association (in Scotland) of the assets used by the Licensee in respect of its NTS Transportation Owner Activity for the purposes of setting prescribed rates came into effect, RB_t will have the value of zero in Formula Year t and in each subsequent Formula Year, unless the Authority has satisfied itself that the Licensee has used reasonable endeavours to minimise the amount of the prescribed rates. If the Authority has so satisfied itself, it will direct that the formula set out in this Part B is to apply for the purposes of calculating the RB_t term in the specific Formula Year and in each of the subsequent Formula Years.

Part C: Calculation of the licence fee adjustment term (LF_t)

2B.27 For the purposes of the Principal Formula, subject to paragraph 2B.11 of this condition, LF_t is derived in accordance with the following formula:

$$LF_t = \left(\frac{LFA_{t-2}}{RPIA_{t-2}} - LFE_{t-2} \right) \times PVF_{t-2} \times PVF_{t-1} \times RPIF_t$$

2B.28 In the above formula for LF_t :

2B.29 LF_{t-2} 2B.30 means the amount of the payments, in Formula Year t-2, made by the Licensee in respect of the NTS Transportation Owner Activity under Standard Condition 3 (Payments by the Licensee to the Authority).

2B.31 LF_{t-2} 2B.32 means the amount of the licence fee allowance in Formula Year t-2, and is represented by the amount set out in Appendix 2 of this condition.

2B.33 RPI_{t-2} 2B.34 has the value given to it by Part D of Special Condition 2A.

2B.35 PV_{t-2} 2B.36 has the value given to it by Part D of Special Condition 2A.

2B.37 RPI_{t-1} 2B.38 has the value given to it by Part D of Special Condition 2A.

2B.39 In the Formula Years 2013/14 and 2014/15 LF_t will have the value zero.

Part D: Calculation of the policing cost adjustment term (OPTC_t)

2B.40 For the purposes of the Principal Formula, subject to paragraph 2B.14 of this condition, OPTC_t is derived in accordance with the following formula:

$$\text{OPTC}_t = \left(\frac{\text{OPTA}_{t-2}}{\text{RPIA}_{t-2}} - \text{OPTE}_{t-2} \right) \times \text{PVF}_{t-2} \times \text{PVF}_{t-1} \times \text{RPIF}_t$$

2B.41 In the above formula for OPTC_t:

2B.42 OP TA_{t-2} 2B.43 means the amount of the payments, in Formula Year t-2, made by the Licensee to the Secretary of State in respect of provision of policing services.

2B.44 OP TE_{t-2} 2B.45 means the amount of the policing cost allowance in Formula Year t-2, and has the value of £13.5 million.

2B.46 RPI A_{t-2} 2B.47 has the value given to it by Part D of Special Condition 2A.

2B.48 PV F_t 2B.49 has the value given to it by Part D of Special Condition 2A.

2B.50 RPI F_t 2B.51 has the value given to it by Part D of Special Condition 2A.

2B.52 In the Formula Years 2013/14 and 2014/15 OPTC_t will have the value zero.

Part E: Calculation of the Independent Systems adjustment term (ISA_t)

2B.53 For the purposes of the Principal Formula, ISA_t is derived in accordance with the following formula:

$$\text{ISA}_t = \text{IS}_t - (\text{ISE}_t \times \text{RPIF}_t)$$

2B.54 In the above formula for ISA_t:

2B.55 IS_t 2B.56 means the amount paid in Formula Year t, in respect of the recovery of costs incurred pursuant to arrangements associated with the conveyance of gas to Independent Systems and as derived in accordance with Special Condition 11F (Gas Conveyed to Independent Systems).



National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

2B.57 ISE_t 2B.58 means the Independent Systems allowance in Formula Year t, and is represented by the amount set out in Appendix 3 of this condition.

2B.59 RPIF 2B.60 has the value given to it by Part D of Special Condition 2A.
t

Appendix 1

Values for the RBE_t term (£m, 2009/10 prices)

(see paragraph 2B.6 of this condition)

	RBE (£m)							
Formula Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
National Grid Gas plc	80.163	80.186	80.224	80.255	80.169	80.172	80.200	80.206

Appendix 2

Values for the LFE_t term (£m, 2009/10 prices)

(see paragraph 2B.10 of this condition)

	LFE (£m)							
Formula Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
National Grid Gas plc	8.564	8.717	8.717	8.717	8.717	8.717	8.717	8.717

Appendix 3

Values for the ISE_t term (£m, 2009/10 prices)

(see paragraph 2B.16 of this condition)



National Grid's sale of Gas Distribution Network business- consultation on regulatory aspects

	ISE (£m)							
Formula Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
National Grid Gas plc	7.888	7.888	7.888	7.888	7.888	7.888	7.888	7.888

Appendix 5 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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