

To: Fulcrum Pipelines Limited

**The Gas Act 1986
Section 23(1)(a)**

Notice of statutory consultation on a proposal to modify the special conditions of the gas transporters licence held by Fulcrum Pipelines Limited.

1. The Gas and Electricity Markets Authority ('the Authority') proposes to modify the special conditions of the gas transporter licence held by Fulcrum Pipelines Limited ('the Licensee') granted or treated as granted under section 7 of the Gas Act 1986 by inserting Special Condition 2 'The Network Innovation Competition' (the NIC licence condition) which puts in place arrangements for the governance and funding of the Network Innovation Competition ('NIC').
2. We are proposing this modification to insert the NIC licence condition to enable the Licensee to recover Bid Preparation Costs, pursuant to the NIC Governance Document as defined in the NIC licence condition, for a project that was not awarded NIC funding in the 2017 NIC. The NIC licence condition will also enable the Licensee to bid for funding for innovative low carbon or environmental projects through the gas NIC in the future and if successful to receive NIC funding.
3. We introduced the gas NIC as part of the RIIO Transmission and Gas Distribution price controls (RIIO-T1 and RIIO-GD1 respectively). We published a decision in March 2012¹ that Independent Gas Transporters ('IGTs') could enter the competition alongside the gas transporters regulated through the RIIO price control framework. To do this, the IGTs must request a modification to their licences to insert the NIC licence condition. We consulted on the draft NIC licence condition as part of the RIIO-GD1 licence consultation. We have also consulted on changes to Special Condition 2 since it was originally introduced for GTC Pipelines Limited. The NIC licence condition on which we are consulting includes all amendments made to the draft NIC licence condition previously.
4. The effect of this proposed modification is to establish arrangements known as the NIC which will enable the Licensee to apply for funding for eligible NIC projects. These include:
 - a) establishing the NIC funding mechanism and the funding return mechanism which outline the circumstances under which the Licensee will receive funding from the National Transmission System (NTS) operator and the circumstances under which the Licensee must return money to the NTS operator;
 - b) establishing that the regulation, governance and administration of the NIC is detailed in the Gas Network Innovation Competition Governance Document ('NIC Governance Document');²
 - c) establishing that the Licensee must comply with the NIC Governance Document as if it formed a part of its licence; and

¹ <https://www.ofgem.gov.uk/publications-and-updates/decisions-network-innovation-competition-and-timing-and-next-steps-implementing-innovation-stimulus>

² <https://www.ofgem.gov.uk/publications-and-updates/version-30-network-innovation-competition-governance-documents>

d) establishing the procedure for issuing and updating the NIC Governance Document.

5. A copy of the proposed modifications and other documents referred to in this Notice have been published on our website (www.ofgem.gov.uk). Alternatively they are available from foi@ofgem.gov.uk.

6. Any representations with respect to the proposed licence modification must be made on or before 19 January 2018 to: Rebecca Pickett, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to Rebecca.Pickett@ofgem.gov.uk.

7. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.

8. If we decide to make the proposed modification it will take effect not less than 56 days after the decision is published.

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Geoffrey Randall
Duly authorised on behalf of the
Gas and Electricity Markets Authority
18 December 2017

Schedule to Notice

Special Condition 2: The Network Innovation Competition

Introduction

1. The purpose of this condition is to establish arrangements known as the Network Innovation Competition (“NIC”) with respect to the funding of innovative low carbon or environmental projects carried out by the Licensee.

2. This condition also makes provision for arrangements relating to the regulation, administration, and governance of the NIC.

Part A: Function of the Network Innovation Competition (NIC)

3. The function of the NIC is to enable the Licensee to fund Eligible NIC Projects by means of payments received from the NTS Operator in accordance with the determination process described in Part B of this condition and as varied, where appropriate, by the Funding Return Mechanism described in Part C of this condition.

Part B: The NIC Funding Mechanism

4. The NIC Funding Mechanism is the mechanism by which the Licensee receives the amount of authorised NIC Funding in any Formula Year from the NTS Operator, less any Funding Return as described in Part C of this condition and in accordance with the NIC Governance Document.

Part C: The Funding Return Mechanism

5. The Funding Return Mechanism relates to payments to be made by the licensee to the NTS Operator, in each case to such extent (if any) as may be relevant, of:

(a) Halted Project Revenues;

(b) Disallowed Expenditure;

(c) Returned Royalty Income; and

(d) Returned Project Revenues.

6. The Funding Return is the total amount, in respect of the licensee, of any amounts arising under paragraph 5 of this condition.

7. Halted Project Revenues are any revenues received by the licensee from the NTS Operator under the NIC Funding Mechanism in respect of an Eligible NIC Project which have not yet been spent, or otherwise committed, at the time that the Authority requires that project to be halted in accordance with the applicable provisions of the NIC Governance Document or the terms of the relevant Project Direction.

8. Disallowed Expenditure is any revenue received by the licensee from the NTS Operator under the NIC Funding Mechanism that the Authority determines has not been spent in accordance with the applicable provisions of the NIC Governance Document or the terms of the relevant Project Direction.

9. Returned Royalty Income is revenue earned from intellectual property generated through Eligible NIC Projects undertaken by the licensee, less Directly Attributable Costs, and that is payable to customers under the NIC Funding Mechanism, as calculated in accordance with the provisions of the NIC Governance Document.

10. For the purposes of paragraph 9 of this condition, Directly Attributable Costs are costs relating to the maintenance and management of intellectual property generated through Eligible NIC Projects undertaken by the licensee.

11. Returned Project Revenues are:

- (a) revenues received by the Licensee from the NTS Operator under the NIC Funding Mechanism in respect of an Eligible NIC Project that the Authority determines have not been spent, and where the Project has been carried out in accordance with the applicable provisions of the NIC Governance Document and/or the terms of the relevant Project Direction, or
- (b) revenues earned from Eligible NIC Projects by the Licensee other than Returned Royalty Income, that the Authority determines are payable to customers.

12. The Authority may direct how the relevant revenues under paragraphs (a) and (b) above should be paid to customers through the Funding Return Mechanism, or where the Authority considers it to be appropriate, how they should be retained by the licensee.

13. In each Formula Year t, in accordance with the appropriate provisions of the NIC Governance Document, the Authority will calculate and then, by direction given to the licensee, will specify:

- (a) the amount of any Funding Return that the licensee must pay to the NTS Operator; and
- (b) the manner in which and the timescale over which that amount is to be so paid.

14. The licensee must comply with any direction that is issued by the Authority under paragraph 13 of this condition.

Part D: Determination of the amount of the NIC term

15. The NIC term is the net amount of NIC Funding less any Funding Return for the Formula Year t that is to be paid to the licensee by the NTS Operator, or vice versa, in compliance with the determination made for that purpose in a direction issued by the Authority pursuant to the provisions of Part D of Special Condition 2F (The Network Innovation Competition) in the gas transporter licence held by the NTS Operator.

16. The NIC Funding to which paragraph 4 of this condition refers is the proportion (if any) of total NIC Funding raised by the NTS Operator in accordance with the NIC Funding Mechanism that the Authority determines is to be allocated to the licensee in respect of its Eligible NIC Projects, as adjusted by the amount of any Funding Return (as to which, see Part C of this condition).

17. In each Formula Year t, as provided for by the NIC Governance Document and in accordance with the appropriate provisions of the NTS Operator's licence the Authority will calculate and then, by direction given to the licensee and other licensees, will specify, in accordance with the appropriate provisions set out in the NIC Governance Document:

- (a) the net amount of the NIC term;
- (b) how the amount of that term has been calculated, taking account of any Funding Return; and
- (c) the manner in which and the timescale over which the NTS Operator is required to transfer that amount to the licensee or vice versa.

Part E: The NIC Governance Document

18. The Authority will issue, and may from time to time revise, a document, to be known as the NIC Governance Document, for purposes connected with the regulation, governance, and administration of the NIC.

19. The NIC Governance Document may, without limitation, make appropriate provision about or impose requirements in respect of:

- (a) the eligibility criteria to be applied by, and information to be provided to, the Authority in relation to the assessment and approval of proposed NIC Projects;
- (b) the evaluation criteria against which the funding of such projects will be assessed and approved (where necessary);
- (c) the process and procedures that will be in place for the assessment, approval, and financing of such projects' funding (where necessary);
- (d) arrangements to ensure that relevant matters learned from the implementation of Eligible NIC Projects can be captured and disseminated by the licensee to other licensees;
- (e) the nature of the reporting obligations in respect of such projects (which may include reporting in respect of the funding and the completion of such projects, as well as reporting on compliance with this condition and the provisions of the NIC Governance Document);
- (f) arrangements relating to the treatment of intellectual property rights including Returned Royalty Income in respect of Eligible NIC Projects; and
- (g) any other matters relating to the regulation, governance, or administration of the NIC.

20. Where provisions of the NIC Governance Document require the compliance of the licensee, the licensee must comply with those provisions as if the NIC Governance document were part of this condition.

Part F: Procedure for issuing and revising the NIC Governance Document

21. Before issuing the NIC Governance Document under this condition, the Authority, by notice given to the licensee and all other licensees with a condition of similar effect to this condition in their licence, will:

- (a) state that it proposes to issue the NIC Governance Document, and specify the date on which it proposes that the document should take effect;
- (b) set out the text of the NIC Governance Document and the Authority's reasons for proposing to issue it; and
- (c) specify the date (which will not be less than a period of 28 days from the date of the notice) within which representations with respect to the proposed NIC Governance Document may be made.

22. The Authority will consider any representations that are duly made and not withdrawn.

23. The requirements of paragraphs 21 and 22 (of this condition) may be satisfied by action taken before, as well as by action taken after, the commencement of this condition.

24. In paragraph 21 of this condition, "issuing the NIC Governance Document" includes issuing any revision of the document, and the procedure provided for under that paragraph will apply to any such revision.

Part F: Interpretation

25. For the purposes of this condition:

<u>Authority</u>	<u>means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000;</u>
<u>Disallowed Expenditure</u>	<u>has the meaning given to that term in paragraph 8 of this condition;</u>
<u>Directly Attributable Costs</u>	<u>has the meaning given to that term in paragraph 10 of this condition;</u>
<u>Eligible NIC Project</u>	<u>means a project undertaken by the licensee or any other gas transporter licensee that appears to the Authority to satisfy such requirements of the NIC Governance Document as are necessary to enable the project to be funded under the NIC Funding Mechanism;</u>
<u>Formula Year</u>	<u>means a period of twelve months commencing on 1 April at 06:00 hours;</u>
<u>Funding Return</u>	<u>has the meaning given to that term in paragraph 6 of this condition;</u>
<u>Funding Return Mechanism</u>	<u>has the meaning given to that term in paragraph 5 of this condition;</u>

<u>Halted Project Revenues</u>	<u>has the meaning given to that term in paragraph 7 of this condition;</u>
<u>Network Code</u>	<u>has the meaning given in Standard Condition 9 (Network Code and Uniform Network Code);</u>
<u>NIC Funding</u>	<u>means the amount received by the licensee to fund the implementation of a NIC Project;</u>
<u>NIC Funding Mechanism</u>	<u>means the arrangements (pursuant to Special Condition 2F of the NTS Operator's gas transporter licence) for the recovery by the NTS Operator of the amount of total authorised NIC Funding in any Formula Year and the apportionment of that amount between the NTS Operator, the licensee, and all other licensees;</u>
<u>NIC Governance Document</u>	<u>means the document issued by the Authority under Part E of this condition, subject to the requirements of Part F of this condition, relating generally to the NIC and including matters relating to the operation of the NIC Funding Mechanism;</u>
<u>NTS</u>	<u>means the national transmission system as defined in the Network Code;</u>
<u>NTS Operator</u>	<u>means a licence holder who is obliged to comply with one or more conditions in Part B: Standard Special Conditions applicable to all NTS licensees (as a whole or in part) as a result of any direction issued pursuant to Standard Special Condition B1 (Application/Disapplication of standard conditions in Section A (Interpretation, Application and Payments) and Section B (General) and Application/Disapplication of Standard Special Conditions applicable to NTS licensees);</u>
<u>Project Direction</u>	<u>means a direction issued by the Authority pursuant to the NIC Governance Document setting out the terms to be followed in relation to an Eligible NIC Project as a condition of its funding under the NIC Funding Mechanism;</u>
<u>Relative Price Control</u>	<u>means the arrangements set out in Special Condition 1; and</u>
<u>Returned Project Revenues</u>	<u>has the meaning given to that term in Part C of this condition.</u>
<u>Returned Royalty Income</u>	<u>has the meaning given to that term in paragraph 9 of this condition.</u>

26. Defined terms in paragraph 25 of this condition are to be read and given effect subject to any further clarification that might be set out in the NIC Governance Document in relation to such terms.