

Tim Davies
Joint Office

By email to enquiries@gasgovernance.co.uk

9th February 2011

Dear Tim

**SUBJECT: Total Gas & Power Ltd (TGP) consultation response to
Modifications 0339, 0339A & 0340.**

Total Gas & Power Ltd does not support the implementation of Modifications 0339, 0339A or the implementation of Modification 0340.

1. The Modification Proposal

Total Gas & Power Ltd has consistently supported the correction of the cross-subsidy that currently exists between the LSP and SSP sectors through the support of Modification 0229 and in the interim through the support of Modification 0317.

It has always been the intention of these modifications that any correction of the Unidentified Gas issue should not result in retrospective charges. It is therefore disappointing that the legal text created by the transporters for Modification 0229 has created uncertainty over this point.

Instead of clarifying Modification 0229's effects, Modifications 339, 339A and 340 are unrelated changes seeking to create a fixed date for when Unidentified Gas charges will apply. A fixed date means that if the AUGE'S findings are delivered after that date, then retrospective charges will be levied. This creates a significant risk to suppliers.

It should be noted that shippers have no contractual control on whether the AUGE does deliver as expected and so this modification does not ensure that the Unidentified Gas issue is resolved in good time; it merely creates the risk of retrospection, which has already been argued as an unfair mechanism of allocating costs.

This issue is avoided by the current process that is in place, namely Modification 0229 and the AUGE guidelines document. It avoids the problem of retrospective payments by only being prospective in nature, and also provides a clear mechanism in case the AUGE does not deliver the suitable charges in time (section 8.5 of the AUGE guidelines document).

Modification 0366 clarifies any ambiguity with regard to the application of charges, and so seems a more equitable solution.

2. User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

We agree that these modifications do not incur any costs for xoserve and so are not Users Pays.

b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

No costs will be incurred.

c) Proposed charge(s) for application of Users Pays charges to Shippers

Not applicable.

d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

Not applicable.

3. Extent to which implementation of the proposed modification would better facilitate the relevant objectives

Standard Special Condition A 11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

We do not believe that implementation of these proposals will better facilitate this relevant objective

Standard Special Condition A 11.1 (b): so far as is consistent with sub-paragraph (a), the coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;

We do not believe that implementation of these proposals will better facilitate this relevant objective

Standard Special Condition A 11.1 (c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;

We do not believe that implementation of these proposals will better facilitate this relevant objective.

Standard Special Condition A 11.1 (d): so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;

Modifications 0339, 0339A & 0340 all create retrospective charges which will unfairly penalise or benefit shippers depending on whether their market share has increased or decreased since when the costs were first incurred. There is also a risk that shippers will be required to fund any shortfall in charges from defunct shippers. Also the modifications do not adequately address the issue of the interim payment continuing when the enduring solution charges are also being levied. None of these issues exist in the current process and so the modifications go against this relevant objective.

Special Condition A11.1 (e): so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers;

We do not believe that implementation of these proposals will better facilitate this relevant objective.

Standard Special Condition A11. 1 (f): so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

The intent of Modification 0229, and the associated AUGE guidelines, was clear as to when charges should be applied to shippers. None of these modifications provide clarity to the current process, but instead imposes their own, distinct, change. We therefore do not believe that implementation of these proposals will better facilitate this relevant objective.

4. The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

5. The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) Implications for operation of the system

We do not believe that implementation of these Proposals will present such implications

b) Development and capital cost and operating cost implications

We do not believe there will be any significant costs incurred by this modification.

c) Extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs

Not applicable.

d) Analysis of the consequences (if any) this proposal would have on price regulation

No consequence for price regulations exist.

6. The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposals.

No consequences exist.

7. The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

If Modification 0339 is implemented, and the AUGE does not deliver a valid statement by 1 April 2012, then there will be a requirement to retrospectively reconcile charges or credits to customers. Modifications 0339A & 0340 will require retrospective charges in any event.

Any form of retrospective payment process will be very costly to implement for shippers and will require significant system changes to track payments.

8. The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk:

a) Administrative and operational implications

As stated above, Modifications 0339A & 0340 obliges retrospective charges and Modification 0339 creates a risk they may be required. Any form of retrospective charge will create significant costs as customers are billed or credited a significant time after the event.

b) Development and capital cost and operating cost implications

If retrospective payments occur as result of these modifications, then their handling will increase operating costs.

c) Consequence for the level of contractual risk

Both modifications increase contractual risk as Modification 0339 may, and Modifications 0339A & 340 definitely will, introduce a retrospective charge that will be levied a year after the initial interim payments are made. In many cases shippers will find it difficult to recover these reconciliation amounts from customers they were supplying at the time the costs were incurred, even if their contracts cater for such eventualities.

9. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Introducing a retrospective charge will mean that LSP consumers will be charged additional costs a year after they have been incurred, and possibly by a shipper they no longer contract with. In addition shippers will build additional costs into their charges to cover any unrecoverable debt. Finally a retrospective charge is unlikely to be passed on in full to SSP consumers, owing to the timelag in cost reduction, so providing a windfall profit to those organisations.

10. Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

The likelihood of contractual dispute between consumers and shippers will increase if retrospective charges are implemented.

11. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

a) Advantages

We disagree that either Modification 0339 or Modification 0340 will clarify the intent of Modification 0229. Both modifications seek to implement a fixed date from which charges are applied, irrespective of when the AUGE is accepted by the Panel. It was never the intention of Modification 0229 to introduce the concept of retrospective payments. We cannot identify any advantages with regard to Modification 0339A.

b) Disadvantages

Neither modification takes into account the interim Unidentified Gas payment that was implemented by Modification 0317. This means that, if charges are backdated (as Modifications 0339A & 0340 require and Modification 0339 may result in) then there will be a period of overlap of payment. This is clearly not an equitable adjustment of Unidentified Gas costs.

13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

This modification is not expected to facilitate this objective.

14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

This modification is not expected to facilitate this objective.

15 Programme for works required as a consequence of implementing the Modification Proposal

No system development will be required.

16 Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

We have no comments on proposed implementation dates.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

Yours sincerely

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