

Modification Report
Disclosure of Information Relating to the Operation of, or any Market Relating to, the Pipe-
Line System
Modification Reference Number 0601
Version 1.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

Transco's GT Licence contains the following obligations:

1. Condition 4E - to disclose information relating to the operation of the pipe-line system or any market relating to the pipe-line system, where required to do so by the Network Code; and
2. Condition 9 - to allow third party participants (who are not shippers and as specified in the Network Code Modification Rules) to propose modifications to part or all of the Network Code.

This Proposal would introduce a new defined term of "operational and market data". The intent is that subsequent Proposals, potentially raised by third party participants, could then be used to define operational and market data, specifying both the nature of the information and the arrangements for the release of such information.

The parallel proposal to amend the Network Code Modification Rules seeks to define third party participants that could raise Network Code Modification Proposals in respect of operational and market data should this Modification Proposal to be implemented.

2. Transco's Opinion

Transco has raised this Modification Proposal to facilitate compliance with the Transco GT Licence amendments notified on 27 September 2002 in respect of Standard Condition 4E.

Standard Condition 4E requires Transco to comply with any Network Code obligation to disclose information relating to the operation of the pipe-line system; or any market relating to the pipe-line system. Standard Condition 9 is designed to facilitate third party participants being able to propose modifications to part or all of the Network Code. Transco understands that the specific intent of Standard Conditions 4E and 9 was to facilitate third party participants to raise Proposals to increase the provision of information associated with the operation of, or any market associated with, the pipe-line system. A separate consultation process in respect of changes to the Network Code Modification Rules to recognise third party participants afforded an opportunity to indicate the entities who should be so listed and the scope of such proposed changes.

Transco supports the dissemination of operational and market data to a wider audience including Consumers and other Non-Network Code Parties where it is anticipated that

it would enhance competition; provided this can be achieved without breaching contractual confidentiality provisions. Transco would expect that any decision to implement a Modification Proposal to release further information should be informed by a consideration of the extent that such information provision might adversely impact the commercial position of any market players.

The implementation of this Modification Proposal would introduce a framework that might promote well structured proposals for the release of additional information and therefore Transco recommends implementation.

Transco assesses that the effect of implementation of this Modification Proposal on the electricity regime is likely to be neutral.

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

Implementation of this Modification Proposal would better facilitate compliance with Standard Condition 4E.

**4. The implications for Transco of implementing the Modification Proposal , including
a) implications for the operation of the System:**

No direct implications are anticipated.

b) development and capital cost and operating cost implications:

No costs are anticipated.

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

There are no significant costs that would arise from implementation of this Proposal. However, costs might arise if subsequent Modification Proposals to release operational and market data are implemented. Should this occur, then Transco would not anticipate the direct recovery of costs given that any such direct costs will influence the outcome of the SO internal costs incentive scheme and so will be shared between Transco and Users on the basis defined by that scheme.

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

It is anticipated that the proposal would not have any consequences on price regulation.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

It is not anticipated there would be any such consequences.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

There are no development implications arising from this Proposal.

7. The implications of implementing the Modification Proposal for Users

Should this Proposal be implemented, then Users would be enabled to raise Network Code Modification Proposals in a more structured and efficient form. This may better facilitate consideration as to whether the release of such operational and market data might further the relevant objectives.

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

Should this Proposal, and associated changes to the Network Code Modification Rules be implemented, then third party participants would be able to raise Network Code Modification Proposals for the release of market and operational data in a more structured and efficient form. This may better facilitate consideration as to whether such release of operational and market data might further the relevant objectives and enable Non Network Code Parties to make more focussed representations.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

Implementation of the Proposal would facilitate requests for wider publication of data available to Transco arising from the operation of the Network Code.

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

Advantages:

1. Facilitates efficient operation of Standard Condition 4E.
2. Defines a formal structure for the request of operational and market data.
This will promote well defined Modification Proposals facilitating better informed

consultation.

Disadvantages:

Those respondents who objected to the implementation of this Modification Proposal did so on the basis of:-

1. The Modification Proposal is not required to ensure Transco's compliance with Condition 4E.
2. If the Modification Proposal was implemented, it would potentially fetter Ofgem's discretion on future Modification Proposals .

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Transco has received representations from 14 parties (6 for, 8 against);

Full Support

Powergen,
ScottishPower (SP) and
Major Energy Users Council (MEUC).

Qualified Support

Association of Electricity Producers (AEP),
Innogy and
London Electricity Group (LE).

Against

BP Gas Marketing (BP),
BG Group (BG),
British Gas Trading (BGT),
Shell Gas Direct Ltd (SGD),
Shell UK Exploration & Production (SEP),
Statoil UK Gas Ltd (STUK),
TotalFinaElf (TFE) and
UKOOA.

General

Of those respondents in support of the Modification Proposal, three parties (Powergen, SP and the MEUC) stated that it would lead to better operational and market data being made available to a wider audience. Three respondents (AEP, Innogy and LE) expressed their support for implementation of this Modification Proposal and are of the opinion it may enhance competition. AEP has further stated that "*... it would provide market confidence in the operational and market arrangements that are in place*". However, the same three Users qualified their support and raised concerns in relation to

the potential commercial confidentiality issues that might arise as a consequence of the dissemination of information to a wider audience. Their main concern was that if the granularity of the information was at an inappropriate (low) level, it may reveal a Users' commercial position and have an adverse effect on the markets.

Eight respondents (BP, BG, BGT, SGD, SEP, STUK, TFE and UKOOA) do not support implementation of this Modification Proposal. The details of their objections are identified in the subsequent sections of this part of the report; Transco's GT Licence Condition 4E; fettering of discretion; introduction of a definition for operational & market data; and commercial confidentiality and information liability issues.

One respondent (SGD) has stated that it set out its concerns on previous occasions including; the further release of market sensitive information being released in the 'name of transparency'. SGD has also commented that based on the electricity/gas comparisons that have taken place, "evidence has been provided at industry meetings that information released in the gas market is equivalent, or better to, that in electricity". SGD stated that it is essential that Ofgem provides a response to these comments before any Modification Proposal is agreed and that Ofgem should also provide evidence of the market failures it has identified, including any costs incurred.

Transco's Response

Transco notes the comments that have been put forward by all respondents. Transco believes implementation of this Modification Proposal will *facilitate* application of GT Licence Standard Condition 4E and promote well defined Modification Proposals for increased information release.

Transco notes the respondents' (AEP, Innogy, LE, BP, SGD and STUK) issues relating to commercial confidentiality and 3rd party liabilities but these are issues that would be considered in the context of specific Modification Proposals which seek to define the nature of data release rather than this enabling Modification Proposal.

Transco GT Licence Standard Condition 4E

Two respondents stated that implementation of the Modification Proposal would assist Transco with compliance of its GT Licence Standard Condition 4E.

Five respondents (BP, SGD, SEP, TFE and UKOOA) have stated that they did not believe Transco's GT Licence Condition 4E requires a Network Code Modification to be raised to facilitate compliance.

BGT has commented *"In terms of the nature of access, this Modification Proposal, although providing a starting point, affords access very narrowly to one paragraph of the Network Code..... we believe that it falls short of the original intent of the GT Licence amendment"*.

SEP and UKOOA both commented that Licence Condition 4E does not provide for the disclosure of information itself, nor does it assume that there must be obligations of

disclosure in the Network Code since Condition 4E refers to ‘any obligation’.

SEP has further commented that *"Transco assumes that Modification Proposals to require ... information will be approved"*.

Transco's Response

Transco agrees that a Modification Proposal is not required to ensure its compliance with GT Licence Condition 4E. However, Transco believes that the proposed Network Code Rule Modification changes required to enable compliance with GT Licence Condition 9, together with implementation of this Modification Proposal would provide an improved framework to facilitate potentially increased provision of operational and market information to a wider audience.

Transco notes BGT's comment. However, Transco does not agree that a proposal to provide a framework that would facilitate the future release of information falls short of the original intent.

Transco anticipates that any Modification Proposals for further information release would be subject to the normal Network Code change processes which require an assessment of the impacts of Modification Proposals against the relevant objectives.

Transco disagrees with SEP's comment that it has assumed that (future) Modification Proposals for information release would be approved.

Fettering of Discretion

BP, SEP, SGD and UKOOA commented that implementation of this Modification Proposal might prove restrictive, act as a fetter on Ofgem's discretion on its approval of future Modification Proposals, and that any proposals for future release of information should be decided on their own merits.

Transco's Response

Transco does not agree with the respondents comments that approval of this Modification Proposal could potentially restrict Ofgem's discretion in respect of potential future Modifications. The prime objective of this Modification Proposal is to establish a framework by which all Users and Third Party Participants (TPPs) may propose the prospective release of additional information, which might better facilitate the efficiency of the Network Code change process. Transco believes that for those TPPs and Consumers who are not fully conversant with the Network Code, the implementation of this Modification Proposal would establish a framework which provides clarity and guidance as to how to define information and its method of communication that might be the subject of Modification Proposals.

Transco does agree that any future requests for information should be considered on a case-by-case basis, as and when such requests for information or associated Modification Proposals are progressed.

Definition of Operational and Market Data

BP has commented; *"it does not believe Transco's proposal to introduce a definition of operational and market data is necessary"*

BG has raised a concern *"... this Modification puts in place a prospective mechanism without explicit recognition of the information that Transco would be expected to release."*

Transco's Response

Transco notes BP's comment that the definition of operational and market data is unnecessary. However, Transco is seeking to introduce a defined term into the Network Code at this stage. Transco believes that any future Modification Proposals for information release would provide the mechanism by which operational and market data would actually be defined.

Transco notes the BG concern that a prospective mechanism is being proposed without an explicit definition of the data that would be released. However, this is the intent of the Modification Proposal and Transco believes that this is beneficial.

Transco believes that the incorporation of a defined term "operational and market data" in the Network Code is beneficial. However, no specific data will be specified at the point of implementation should Ofgem be minded to direct. The proposed table in V-1 identifies some of the attributes necessary to define the data to be released and the mechanisms associated with the publication process. Transco is of the view that this would assist in overcoming some of the issues that have arisen recently over Network Code Modification Proposals designed to increase information release. Transco therefore believes that implementation of the Modification Proposal will both facilitate Licence compliance and improve the efficiency of both the Network Code process and Transco's continued information release programme

Commercial Confidentiality and Information Liabilities

Five respondents (AEP, Innogy, LE, BP) support the principle of data release where appropriate. These respondents raise concerns in relation to the release of commercially sensitive information e.g. at an individual level, which could have a detrimental impact on Users, other market participants or confidence in the markets.

STUK has commented; *'While this Modification does not set out what information will be released, it is important to realise that any Modifications relating to information release should be examined to see how they might affect all relevant participants in the industry'.*

BP has also commented; *'Parties providing information in good faith should be kept harmless from the consequences of the actions taken by others on the basis of that*

information'.

Transco's Response

Transco agrees that any Modification Proposals which advocate further information release would need be considered in the context of commercial confidentiality, 3rd party data ownership and potential information liability issues. Transco notes the statement contained in Ofgem's Explanatory Notes (April 2002), *"In making decisions on Network Code modifications that propose the disclosure of information, Ofgem will consider the relevant objectives .. in the light of the Authority's statutory duties and all relevant facts. Such consideration would include having regard to any issues of commercial confidentiality"*.

Transco agrees with STUK that any future requests for information release should be considered by all relevant participants within the industry. The Network Code change process and the regular reporting of information issues at the NT&T Workstream promote wide awareness to achieve this aim.

Transco agrees with BP that information provided in good faith should be free from liabilities where other parties have acted upon the information. Transco believes that Network Code Section V-8 (Liability and Related Issues) provides Users with the assurance that implementation of this Modification Proposal would not introduce any potential liabilities as a consequence of incorrect information being published.

Third Party Participants (TPPs)

BGT has raised a concern about the principle of parties, who are not signatories to a contract, having access to a process that can lead to a material amendment of that contract. BGT has also made a number of comments relating to TPPs, including "TPPs should not have unrestricted access".

Transco's Response

Transco notes BGT's concern and trust they will progress this through the normal Network Code Modification Rules change process.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Implementation of this Modification Proposal would facilitate compliance with Standard Condition 4E.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

Implementation is not required to satisfy these requirements.

14. Programme of works required as a consequence of implementing the Modification Proposal

No programme of works will be necessary until implementation of a subsequent Proposal (if any) to promote publication of operational and market data.

Users and third party participants' requests for this type of information will be processed via the normal Network Code Modification Process, once this Modification Proposal, and if necessary, changes to the Network Code modification rules, have been implemented.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

Transco proposes that the Modification Proposal is implemented.

Transco does not anticipate any systems changes at the time of implementation as any operational and market data, to be requested by Users and third party participants, would be released only after the implementation of such subsequent Proposal.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this proposal is implemented.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

SECTION V : GENERAL

Add new section 5.9

“V.5.9 Operational and Market Data

5.9.1. Subject to the provisions of the Code Transco shall arrange for the data referred to in [Annex V-1], “**operational and market data**” to be published or made available in the manner specified in [Annex V-1].

5.9.2. Where market data is sent to Transco on a day that is not a Business Day Transco shall publish such data on the next following Business Day.

Annex V-1: Table of Operational and Market Data

Column	Name	Description
1	Data	data definition and indication of the time period to which the data corresponds
2	Timing	initial publication timing and where appropriate, timing of updates if the data is subject to any change
3	Format	tabular, graphical, other
4	Presentation	downloadable, viewable or both
5	Disclosure	public or restricted (and if restricted, list of entities to whom the data can be released)

Data	Timing	Format	Presentation	Disclosure
None specified				

Signed for and on behalf of Transco.

Signature:

Tim Davis
Head of Regulation NT&T

Date:

Gas and Electricity Markets Authority Response:

In accordance with Condition 9 of the Standard Conditions of the Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0601**, version **1.0** dated **30/01/2003**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **1.0**.

Signature:

Process Manager - Network Code
Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:
 - (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or
 - (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriate

provided that if the Authority does not so approve the Agreement then Clause 3 shall apply.

2. If the Authority does so approve this Agreement in accordance with the terms of the Order (whether such approval is actual or deemed by effluxion of time) any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.
3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, had it not been repealed, would apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) or 2(2)(b)(ii) of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.
4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.