

**Modification Report**  
**In the Event of User Insolvency all Network Code Charges shall become Immediately Payable**  
**Modification Reference Number 0612**  
Version 1.0

This Modification Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 8.9.3.

## **1. The Modification Proposal**

Where a User becomes insolvent, that is, a receiver, administrator, trustee-in-bankruptcy or other insolvency practitioner, either foreign or domestic is appointed, but a termination has not been effected;

- Transco would have the right to immediately submit invoices for all services supplied up to and including the effective date of insolvency.
- Transco would have the right to invoice for all services consumed post the date of insolvency at intervals determined at its discretion to be appropriate.
- All invoices, irrespective of when issued, would be deemed to be immediately due for payment.
- Additionally, where appropriate, Transco would have the right to estimate invoices, (typically, but not exclusively, relating to energy balancing or reconciliation). Where such an invoice is issued, following any close-out period or actual data becoming available, Transco would reconcile the invoice and issue an adjustment.
- These provisions would apply to both Energy and Transportation charges.

## **2. Transco's Opinion**

Transco's opinion is that this modification proposal should be implemented. This opinion has been formed using the following rationale.

Section V4.3 of the Network Code contains a provision that allows Transco to terminate a User at any time following a User becoming insolvent. However, there may be occasions where an immediate termination may not be the best course of action for the industry as a whole and, as such, an insolvent User could continue to be party to the Network Code. Implementation of the proposal would compliment the existing provision relating to insolvency, and provide Transco with a means of verifying that assurances given by an Administrator on behalf of the insolvent User would be delivered in practice.

Without implementation, the existing provisions relating to invoice schedules and payment periods, detailed in Section S of the Network Code, would continue to apply to the User. Transco believes that where a User continues to trade whilst insolvent, it is appropriate for it to

reduce its financial obligations promptly in order to protect both the industry and Transco from bad debt. Implementation would revise the invoicing and scheduling provisions that would operate in these exceptional circumstances so that Transco could, at its discretion, accelerate the issue of invoices and stipulate immediate settlement terms.

By allowing Transco to accelerate invoice submission and payment due dates for services supplied up to the point of insolvency, the full value of a User's security could be realised, and where invoices are raised for services consumed after insolvency, the option to raise invoices independently of the existing invoices schedules would ensure that securities could be drawn upon promptly and, where no security is held, levels of debt minimised. This would allow any default to be dealt with immediately and reduce the risk of bad debt. By issuing invoices which carry immediate payment terms, any instruments of security lodged by the User that expires shortly after the point of insolvency would be fully utilised. All of these remedies would enhance the prospects of recovery, reduce the potential for unsecured credit exposures and the reduce the prospects of having to levy neutrality adjustments caused by bad debt on remaining Users.

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

By ensuring that all services consumed by the User prior to insolvency, or required while in administration, are invoiced in a manner that induces prompt settlement, probability of recovery increases. Each Energy Balancing and Capacity Neutrality invoice settled reduces the risk of the industry being exposed to bad debt smears. Implementation of the remedies described above would reduce risk for all parties concerned and, therefore, could be expected to facilitate a more secure and competitive environment in which shippers can operate.

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

There would be no implication for the operation of the system.

**b) development and capital cost and operating cost implications:**

Transco believes that implementation would not result in any additional costs being incurred.

**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:**

No special cost recovery arrangements are envisaged.

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

Transco does not believe that this proposal would have any effect 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**

Implementation would reduce Transco's level of contractual risk since a revision to the invoice settlement cycle would increase the probability of Transco being able to call upon an instrument of security, (which may only have a limited term prior to expiry), in the event of payment default. Consequently, this would reduce the likelihood of Transco incurring bad debts.

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

Implementation would not result in any significant systems development for Transco.

**7. The implications of implementing the Modification Proposal for Users**

This proposal would only have direct implications for a User should it become insolvent, in which case it would be bound by the revised invoicing and settlement provisions. Indirectly, all other Users would benefit from reduced levels of risk since a shorter invoice settlement cycle reduces the probability of energy balancing and capacity neutrality bad debt and, therefore, the need to issue neutrality adjustments.

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

It is not anticipated that this proposal would have any effect on any non-Network Code Party.

**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**

Transco is not aware of any impact on legislative and regulatory obligations.

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

**Advantages**

- Provides increased opportunity for Transco to realise the full value of any instrument of security in place.
- Reduces the amount of debt that a User could accrue while trading insolvent.
- Acts as an early warning system by highlighting any payment problems that could be encountered following insolvency.

**Disadvantage(s)**

- Transco can not identify any disadvantages of being able to draw immediately on security where a User becomes insolvent and owes money.
- Where Users are insolvent and continue to trade: issuing invoices with immediate payment terms could cause additional cash flow problems for a User already in financial difficulties. The reduced settlement period could result on the security being called on more frequently, and to a greater extent, than if the existing invoicing and settlement schedules applied.

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

Representations have been received from 9 Users:

TotalFinaElf Gas ("TFE"), Scottish and Southern Energy ("SSE"), ConocoPhillips, Powergen, British Gas Trading ("BGT") London Electricity Group ("LEG"), Statoil ("STUK"), Scottish Power ("SP") and Shell Gas Direct ("SGD").

The balance of views is that eight Users support the implementation of the Modification Proposal and one User against implementation.

The majority of representations that support the proposal concur that Transco should have the ability to reduce risk exposure promptly to protect both the industry and Transco from bad debt.

SSE supported the view that measures to amend the existing invoice schedule and payment period where a User becomes insolvent but not terminated are appropriate and stated, *"such measures could help minimise bad debt and secure access to security, thus minimising the impact on other Users"*.

Similarly TFE stated *"this proposal may result in an increased probability of recovery of amounts owed for liabilities incurred by the insolvent user which in turn could reduce the exposure of the industry to bad debt smears"*.

PowerGen commented that the immediate termination of a User who has become insolvent is not always the most effective way of managing risk to the community. PowerGen state that *"This proposal allows Transco the flexibility to manage any resulting debt in the interim period"*. SGD also supported this view and stated *"This proposal allows for circumstances where immediate termination of an insolvent shipper would not be the best course of action for the industry while ensuring that the industry is protected from bad debt"*

BGT commented that *"We believe the mod would reduce the risk for all parties concerned, facilitating a more secure and competitive environment in which shippers can operate"*.

STUK do not support implementation of the proposal and stated that *"we believe that the current provisions within the Network Code are sufficient and provide an appropriate level of protection against credit exposure for both Transco and the industry"*. It considers that with the decision by Ofgem to implement Modification Proposal 0572 "The provisions of Letters of Credit for energy

balancing credit cover", Transco will be provided with the necessary level of credit cover in the future should a shipper encounter any financial uncertainty. Furthermore shippers would be prevented from making an orderly exit from the market due to a greater administrative burden which was considered to be unreasonable.

Transco's response: The current provisions within the Network Code do not provide the flexibility to reduce the amount of debt that an insolvent User could accrue. Whilst risk will be protected by alternative forms of credit cover under Modification Proposal 0572, Transco considers there is still considerable risk exposure to the community if that credit cover were due to expire and Transco was unable to levy a claim upon it due to the current Network Code restrictions around invoicing. Transco considers it is appropriate to establish its exposure to a failed User promptly in order to protect all parties and revision of the invoicing and payment provisions will help facilitate this. Whilst Transco does not consider that there would be an additional burden in terms of administration, as the same amount of invoices would still be issued at an earlier stage, it does accept that any estimated invoices may result in further work where actual data became available.

Of those respondents that support implementation of the proposal, clarity was sought on the following:

### **Implementation Timescales**

SSE requested clarification on the proposed timetable for implementation of the Modification proposal given that section 15 of the Draft Modification report states 'very soon after direction by Ofgem'.

Transco's response: Transco proposes that the Modification be implemented with immediate effect.

### **Legal Text**

SSE raised an issue in that the proposed legal text did not align completely with section one and suggested the wording should clarify that the intention would also be to submit estimated invoices.

Transco's response: The legal text defines the obligation for Transco to submit invoices which may or may not require estimation. The details of the estimation methodology as presented at the Supply Point and Billing Workstream are based on existing principles and will form part of Transco's operational procedures.

### **Creditors**

ConocoPhillips requested clarity as to whether Transco are expecting to be defined as a preferred creditor in order to ensure payment.

Transco's response: Transco would like to clarify that any revision to the invoice schedule and payment dates would not affect Transco's rights as a creditor as existing Insolvency legislation would still apply.

## **Cash Flow Implications**

LEG offered qualified support for the Modification Proposal but stated *"as it stands it does have some merit but we feel that it is not sufficiently well developed"*. LEG commented *"issuing invoices for immediate payment to an insolvent shipper could cause additional cash flow problems for that shipper and it could just be delaying the inevitable need to terminate the shipper"*. Whilst the intent of the Modification Proposal was considered to be sensible, LEG believe that any decision relating to ad-hoc invoices should be discussed and developed with the EBCC to determine a way forward with Transco.

Transco's response: Transco shares the view of ScottishPower as stated in its representation *"We believe that the cash flow problems which may be created for users who are already in financial difficulty would be outweighed by this"*. Furthermore, by issuing invoices promptly for services already supplied there is a greater probability of security being realised prior to its expiry. As the timing of issuing invoices is key to this Modification Proposal, Transco considers that additional delays could be encountered by raising these issues with the EBCC, and in any event the decision for issuing invoices for Transportation charges should remain with Transco.

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

This modification is not proposed as a result of having to facilitate compliance with safety or other legislation.

### **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**

This modification is not proposed as a result of changes to the methodology established under Standard Condition 4(5).

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

Transco would be required to modify its procedures for monitoring the debt positions of Users.

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

This proposal could be implemented very soon after direction by Ofgem by modifying existing procedures. The UK-Link system does not require modification and, consequently, Transco expects no implementation delays due to IS reasons. Transco would use the existing invoicing systems to derive estimated invoices where it decides that it is appropriate to issue invoices prior to the expiry of any time bound security documentation.

**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 S: Invoicing and Payment

Amend paragraph 1.4.3 as follows:

"Subject to paragraph 1.7, Transco will not change..."

Amend the heading to paragraph 1.7 as follows:

"Termination and Insolvency"

Insert a new paragraph 1.7.3 as follows:

"Notwithstanding paragraph 1.4, Transco may, at any time on or following the occurrence of any of the events set out in paragraph V4.3.1 (e) in relation to any User, submit to that User any Invoice Document in respect of any Billing Period or part of a Billing Period ending at or before the time at which Transco submits such Invoice Document."

Insert a new paragraph 1.7.4 as follows:

"In relation to a User, on the occurrence of any of the events set out in paragraph V 4.3.1(e), all amounts payable to Transco (whether the Invoice Document in which such amounts are shown was submitted before or after the date of the occurrence of any of the events set out in paragraph V4.3.1 (e)) shall be immediately payable notwithstanding paragraph 3.1."

Amend paragraph 3.1.1 as follows:

"Subject to paragraphs 1.7.2, 1.7.4 and 4.2.2, the Invoice Amounts under each Invoice Document shall be paid..."



Signed for and on behalf of Transco.

Signature:

**Debbie Dowling**  
**Finance Manager**

**Support Services**

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 **0612**, version **1.0** dated **28/05/2003**) 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 appropriateprovided 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.