Modification Report
Amendments to the NTS Entry Capacity Auction Period
Modification Reference Number 0465

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

It is proposed that the next NTS Entry Capacity Auctions should only be for the six month period October 2001 to March 2002 inclusive. Capacity details relating to this period are required to be published by Transco by 30 June 2001.

Further, the proposal suggests that the Network Code should provide for the Monthly System Entry Capacity (MSEC) auction to be completed prior to the commencement of the Monthly Interruptible System Entry Capacity (MISEC) auction.

2. Transco's Opinion

Transco supports this Modification Proposal, believing there are merits in limiting entry capacity for a further six month period in the next set of entry capacity auctions rather than the twelve month period presently defined in the Network Code.

Implementation of this Modification Proposal would mean that the end of the next Entry Capacity period would coincide with the end of the current price control period on 31 March 2002. Due to the present uncertainty over the nature of the regime and the methodology by which Transco would release capacity from 1 April 2002 onwards, it would appear prudent to also start a new capacity period from that date.

Transco also supports the proposal to amend the date by which the MSEC Auction should be completed, to clarify the intent that the MSEC auction should be conducted before the MISEC auction. In the Draft Modification Report Transco suggested that the MSEC auction completion date could be amended to 31 July in the preceding gas year, which is consistent with the operation of the auction timetable in the past. The MISEC auction would then be completed by 15 August. Transco recognised that an alternative approach would be to complete the MSEC auction by 31 August and delay completion of the MISEC auction until 7 September. However, this alternative approach was not initially supported by Transco as completion of the auctions in September would not permit one months notice prior to possible NTS Commodity Charge adjustments on 1 October, such adjustment potentially being required as a result of deviations in auction income from levels consistent with Transco's allowed revenue. Following shippers' responses, however, Transco has revised its position in respect of the auctions timetable which is set out in Section 11 of the Final Modification Report.

In order to ensure the most up to date gas flow information is used in the allocation of capacity to each ASEP, Transco also supports calculation of auction quantities based on historical gas flows taken over a 36 month period ending on 31 May rather than 30 November in the Preceding Capacity Year. These quantities would be published by 30 June 2001.

Since the Network Code defines a capacity year as the period from 1 October to 30 September, the proposed legal text for the Transition Document, paragraphs 8.1.3 and 8.1.4, also provides for the relevant completion dates of the MSEC and MISEC auctions in January / February 2002.

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

The proposer does not specifically state the extent to which the Modification Proposal would better facilitate the relevant objectives. However, it notes that should this Modification not be approved the start of the next formula period on 1 April 2002, when it is envisaged that different rules will apply, would fall midway through a capacity period running from 1 October 2001 to 30 September 2002.

Transco agrees that it would be preferable for Users to only purchase capacity for the remaining period of the current price control. Users would be able to participate in the auction with full certainty over the nature of the regime over the whole capacity period, which should enable them to make more efficient decisions on their capacity requirements. This, in turn, should promote a more efficient and economic use of the pipeline system.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

Transco does not anticipate that there would be any implications for the operation of the System.

b) development and capital cost and operating cost implications:

No development costs are required to implement this proposal and operating costs are expected to remain the same.

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 such costs have been identified.

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

No such consequences have been identified.

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

Transco does not anticipate that there would be any consequences on the level of contractual risk to Transco under the Network Code as a result of the implementation of this Modification Proposal.

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

No development implications are anticipated for the computer systems of Transco or the related systems of Users.

7. The implications of implementing the Modification Proposal for Users

Users would only be able to acquire MSEC and MISEC for a six month period from 1 October 2001 to 31 March 2002.

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

There would be no direct implications of implementing the Modification Proposal for the above parties. However, the fact that Users would only be able to acquire Entry Capacity for a further six month period may have an impact on the contractual arrangements between Users and other parties in the gas supply chain.

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

No consequences are anticipated on the legislative and regulatory obligations or contractual relationships of each User and Non-Network Code Party of implementing the Modification Proposal.

Transco's regulatory obligations may be better aligned with the next price control if the next series of MSEC auctions are limited to six months.

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

Advantages :

- Entry Capacity would be offered up to 31 March 2002. A new capacity period could therefore commence at the same time as the start of a new price control period.

- Ensures that the auction process timetable is correctly aligned, with MSEC auctions being completed prior to MISEC auctions.

Disadvantages :

- There would be no move to an annual capacity regime. Many industry participants consider there would be benefits in an annual regime as there would be greater contractual certainty. Entry Capacity prices and the post auction adjustment to the NTS Commodity charge would both be known for a full 12 month period.

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 the following nineteen parties :

Northern Electric and Gas (NEAGL)

Association of Electricity Producers (AEP)

Aquila Energy

Dynegy UK Limited

Conoco (UK) Limited

BP UK Gas and Power (BP)

Exxon Mobil International Limited (Exxon Mobil)

Alliance Gas Limited (AGL)

Innogy

BG Gas Services Limited (BG)

Chevron UK Limited

Shell Gas Direct Limited (SGD)

Total Fina Elf Gas and Power Limited (TFEG&P)

Scottish and Southern Energy (SSE)

British Gas Trading (BGT)

Enron Europe Limited (Enron)

Powergen

TXU Europe Energy Trading (TXU)

Cinergy Global Trading (CGT)

Duration of Capacity Period :

There is unanimous support for the proposal for the next auction to permit the purchase of capacity for only a six month period, up to 1 April 2002 and the start of the next price control period.

NEAGL, Dynegy, AGL, Chevron, SGD, SSE and Powergen believe that to release capacity for a twelve month period would create a great deal of uncertainty for Shippers bidding in the auction and lead to inefficient decision making on capacity requirements. Enron comments that the new price control will have an impact on the over recovery mechanism and the incentive structure for investment and therefore it would appear sensible to hold a separate auction for entry capacity in the new price control period. SSE expresses general concerns that to date there has been no significant discussions of the regime under the new price control.

Dynegy, Conoco, AGL, BG, SGD and Powergen argue that a six month capacity period would provide a further opportunity for the community to address concerns relating to the current regime and allow more time for parties to better understand the impact of the new price control and develop a longer term capacity regime.

Dynegy is of the opinion that the current auction design may be distorting the allocation of a finite resource, having a detrimental effect on effective competition between Users. Dynegy stresses that it is imperative that the auction design is correct before any future investment can be based on signals arising from the auctions. BG is also of the opinion that a "fundamental systems overhaul" is required prior to April 2002, to ensure that the RGTA capacity system provides the functionality that customers require.

Many respondents stress that revenue over recovery adjustment mechanism needs to be readdressed prior to the next set of auctions. Conoco urges that discussions on this should have priority. BG also highlights issues relating to the capacity incentive, the asymmetry in financial treatment of Within Day sales and buy back action and the treatment of Interruptible Capacity with respect to buy back costs.

In addition, SGD details several other aspects of the current structure of the auction it considers would need to be addressed before auctions would be appropriate for the longer term, including overrun charges, barriers to secondary trading, reserve prices and uncertainty surrounding the nature and value of the product being purchased. SGD also highlights areas where it considers that more information is required. These areas include Transco's performance in bringing capacity to the market, the trade offs achievable between terminals, instances where Transco cannot make available the level of capacity which has been sold and details of planned maintenance periods.

Chevron advises that it has not yet finalised its maintenance shutdown plans for the summer of 2002 and therefore, on the assumption that other gas producers could be in a similar situation, an auction for 12 months of capacity may not be appropriate. Chevron suggests that the added uncertainty over capacity availability could prompt shippers to bid for more capacity than they actually need, leading to further upward pressure on the prices bid for entry capacity over this period.

Chevron suggests moving to an annual capacity regime from April 2002 on the basis that capacity availability information would be published at a time when both Producers and Transco have greater certainty over their summer maintenance requirements. Chevron acknowledges that shippers could trade capacity which is not required during offshore shutdown periods. However, it considers that evidence to date shows that this trading does not take place and as a consequence firm capacity is devalued.

AEP and Innogy also stress that they are in favour of capacity periods which are at least of twelve months duration. However these respondents argue that the period should be aligned with the start of the gas year in October, as this would provide supplies and customers with certainty over transportation charges during the tendering process. With this in mind, both respondents also give support for a further auction of capacity over a six month period from

1 April 2002 to 30 September 2002. They also argue that this should also give time for the development of longer term capacity arrangements.

Aquila and Exxon Mobil state that they are in support of longer term capacity periods of at least five years. However, Aquila raises concerns over a move to a regime of longer auction periods before a secondary market for entry capacity is properly established, noting that whilst this is not the case shorter term capacity periods will continue to allow all participants the opportunity to acquire gas landed at the beach.

Auction Timetable :

There is unanimous support for the principle that the MSEC auctions should be completed before the MISEC auctions. SGD and Enron comment that this is necessary as the volume of interruptible capacity available and the demand for the product is dependent on the level and value of capacity sold in the firm auctions.

Varying opinions, however, have been received over when the auctions should take place.

Dynegy and Powergen agree with Transco's suggestion for the MSEC auction to be completed by 31 July and the MISEC auction completed by 15 August. They believe that this timetable would allow sufficient time for Users to assess the information and formulate bidding strategies and also allow Transco to give a full one month's notice of any resulting changes in transportation charges.

AEP and SSE express a preference for all auctions, including MISEC, to be completed by 31 July, in order to allow a full two month notice period of any changes to the NTS Commodity Charge. However, SSE accepts that this may not be possible as it also considers that a minimum of two weeks is required between the start date of the auctions and the publication of capacity availability information. SSE therefore urges for the auctions to be completed by early August, which would still allow as much notice as possible of any adjustments to charges.

In contrast, NEAGL, Conoco, Exxon Mobil, AGL, Innogy, BG, Chevron, SGD, TFEG&P, Enron, TXU and CGT do not agree that the completion date for the MSEC auctions should be moved to 31 July. These respondents believe that this does not permit sufficient time for Shippers to develop their bidding strategies and assess the capacity availability information. Chevron also notes that time is required to review the implications of decisions on other related Modification Proposals, for example, Modification 0459

(Rebalancing System Entry Capacity Charges with respect to Barrow and St. Fergus System Entry Points).

SGD and TFEG&P are of the opinion that the existing mechanism for redistributing any over recovery of revenue is discriminatory in nature and must be amended prior to the next auction. They therefore advocate a MSEC auction completion date of 31 August. TFEG&P believes that there is a strong potential for a further over recovery in the next auction due to the prevailing auction methodology and concerns regarding demand for entry capacity.

Enron also notes that the complexities of the revenue adjustment process mean that the industry must have adequate time to decide on this mechanism. Enron stresses the importance of ensuring that bidders are positively informed of a decision on the over/under recovery adjustment mechanism prior to the auction due to the influence this could have on bidding strategies.

TFEG&P also objects to the additional 15% reduction in all ASEP reserve prices, which was another outcome of PD13. It is of the opinion that exacerbates the relative lack of competition for entry capacity, particularly at the Barrow entry terminal.

SGD draws attention to the events at the Teesside terminal in late May. It considers that additional time prior to the next auction is required to fully understand these events and assess the relative risks assigned to both Shippers and Transco under the current regime.

NEAGL expresses disappointment that the capacity availability information will not be published until 30 June 2001 due to the consultation timetable followed by the proposal and, in light of this, gives support to a timetable which would enable MSEC auctions to take place at the beginning of August and the MISEC auctions towards the end of August.

BGT expresses support for a similar timetable, whereby MSEC auctions would commence on 31 July and MISEC auctions would be completed by 24 August. BGT notes that this timetable would permit the required one month notice period of any changes to transportation charges to be given.

AGL, Enron and TXU suggest that there should be a months delay to both auctions. The MSEC auction would be completed by 31 August and the MISEC auction by mid September. AGL also adds that this would allow time for the industry to gain a clearer view on how the potential change to the PGT licence relating to the revenue adjustment mechanism.

Enron suggests that if the MSEC auctions have to be completed by 15 August, the time between the MSEC and MISEC auctions should be compressed to enable the MSEC auctions to start as late as possible. Enron considers that it is important for the auctions to take place as close as possible to the capacity period as this will ensure a greater correlation between the size of bids and actual demand for capacity, which, in turn, should provide clearer signals on investment. CGT also argues that the auctions should be held as late as possible.

BG is of the opinion that there is greater merit in allowing time to ensure that the regime is improved as much as possible rather than having advanced notice of any change in transportation charges, and therefore suggests that the auctions are put back to September. Enron also questions the value of having a one month notice period of adjustments to charges and suggests that it is more important for shippers to have time to correctly interpret the auction signals.

Exxon Mobil, Innogy and SGD believe that there should be at least four weeks between the date when the capacity availability information is released and the auction start date. Exxon Mobil adds that the time period prior to the auction should not be less than the period allowed between the end of the auction and the operational start date of capacity. Innogy suggests that the period between the publication of quantities and the completion of the auctions needs to be set so that it is consistent with the prevailing notice period for changes in transportation charges. Innogy therefore proposes that it would be preferable to start the auctions on 1 August.

BGT raises a query in relation to the legal text and whether the dates for the process of auctions for capacity over the 2001 / 2002 winter period should be included in the transitional document.

Determination of MSEC Quantities :

AEP, Exxon Mobil, Innogy, SGD, SSE, BGT, Powergen, TXU support the use of the most up to date information in the calculation of MSEC quantities as they believe this would give more confidence in the accuracy of the volumes of capacity released. Therefore, these respondents agree with Transco's suggestion to use historical flow information up to 31 May rather then 30 November. SSE also states that it would have no objection to Transco only releasing capacity information for the six month period which would be covered by the auction.

However, Exxon Mobil urges consideration of whether a "backward looking approach" is the best method of aligning MSEC distribution with market preferences. SGD also comments that the current methodology does not recognise new flows which are flowing in at a terminal and considers that this can lead to unnecessary constraints which can distort the prices at which capacity is purchased.

Dynegy makes a suggestion that a comparison could be made between the MSEC quantities based on historical information taken up to 30 November and the quantities based on historical information taken up to 31 May. A "greater of" rule could then be used to determine which date is used, therefore ensuring that capacity release is maximised.

Transco Response :

Duration of Capacity Period :

Transco supports the proposal to limit the period for which entry capacity is to be offered in the forthcoming auctions to six months and welcomes the unanimous support that respondents expressed for such a proposal. Transco recognises the arguments put forward favouring a reduction in the auction period for this auction and agrees that a capacity period of twelve months from October 2001 would create uncertainty for Shippers and could lead to inefficient decisions being made in respect of bidding for capacity. However, it should be noted that Network Code requires Transco to publish MSEC quantities for the “capacity year” i.e. October 2001 – September 2002.

Transco notes the comments of Chevron regarding the finalisation of its summer 2002 maintenance requirements. Transco recognises that this is a difficulty affecting many industry participants and that it may lead to uncertainties in both the determination of availability of System Entry Capacity and shippers' requirements to secure that capacity. MSEC quantities are determined according to the capacity expansion and maintenance programme prevailing at the time of publication. At this time the programme is necessarily provisional for activities in the summer of 2002 as these may be affected by works currently underway.

Transco welcomes the comments provided by respondents regarding future discussions of the revenue over-recovery re-distribution mechanism, the duration of future capacity periods under the new price control and a range of other issues such as, auction design, the RGTA capacity system, events at Teesside, overrun charges and daily capacity auctions. Many of these points are outside the scope of Modification 0465 and Transco proposes that these issues are addressed within the context of ongoing developments to the entry capacity regime.

Auction Timetable :

Transco welcomes the support expressed for the completion of MSEC auctions prior to MISEC auctions to reflect the relative certainty of the two forms of capacity and the dependency that the volume of interruptible capacity has on the level of firm capacity sold.

With regard to the proposed timetable for the capacity auctions, Transco recognises the range of views expressed and the counter arguments in achieving a timetable that strikes the right balance between providing shippers sufficient time to develop bidding strategies following an assessment of the MSEC quantities, and providing sufficient notice for any changes in transportation charges and time for shippers to adjust their strategy in the light of the outcome of the auction outcomes.

In respect of any changes to the revenue redistribution mechanism, following discussion at an RGTA meeting, Transco has issued a short discussion paper seeking views on whether it would be appropriate for potential over-recovery to be reflected in a price control adjustment. The introduction of such an approach would require modification to Transco's PGT Licence. Such a change would need to be proposed by the Gas and Electricity Markets Authority and would follow a statutory consultation process.

In light of the majority of respondents favouring a delay in the auctions timetable, and the number of other issues that are still the subject of further discussion, such as the treatment of any over-recovery of auction revenue and Modification Proposal 0459 (Rebalancing System Entry Capacity Charges with respect to Barrow and St Fergus System Entry Points), Transco recommends an auction timetable that provides further time between the release of the MSEC quantities and the commencement of the capacity auctions.

Transco therefore proposes that the MSEC auctions for the capacity period October 2001 to March 2002 are completed by 31 August 2001 and that the MISEC auctions for the same period are completed by 15 September 2001.

It is acknowledged that, to take account of the MISEC auction results, any change in the transportation charges effective from October 2001 would require a reduction in the notice period set out in Network Code, which would require a Modification Proposal to be implemented.

Determination of MSEC Quantities :

Transco welcomes the support expressed for the use of the most up to date information in the calculation of MSEC quantities and maintains its proposal that the latest date for the 36 month period of historical gas flow information is amended from 30 November to 31 May.

In response to the observation made by SGD, Transco would point out that the methodology for determination of MSEC quantities does provide for account to be taken of forecast changes to terminal flows. This facility would be utilised if Transco was aware of a forecast of a significant change to the profile of gas deliveries at a terminal, e.g. associated gas fields being delivered to a terminal normally receiving 'dry' gas, or a significant change to the forecast peak delivery, e.g. new fields coming on-stream. In the event of such information being used to determine the MSEC, Transco would notify shippers of the assumptions in accordance with Network Code.

In respect of Exxon Mobil's query whether a "backward looking approach" is the most appropriate mechanism to align MSEC distribution with market preferences, Transco would point out that the current methodology provides a transparent mechanism that achieves a good fit between MSEC determination and likely shipper requirements. Transco recognises that the determined MSEC may not exactly fit shippers' perceived requirements. One of the intentions of the (fifth) VPA (variable profile auction) tranche is to permit capacity to be "moved" between ASEPs in response to shippers' requirements.

In respect of Dynegy’s suggestion to adopt a “greater of rule” in determining which 36 month period to use, Transco would point out that such an option could not be accommodated by the present methodology, which allocates capacity between ASEPs in order to achieve an aggregate amount equivalent to 110% of the Seasonal Normal Demand.

Other Issues :

In respect of BGT’s comment about the Legal Text provided with the Draft Modification Report, Transco can confirm that it contained its proposed amendment to Network Code within the Principal Document (Section B 2.3.2 (a)), rather than the Transition Document in respect of the proposed date for completion of the MSEC auctions. Revised legal text has been provided with the final modification report to reflect Transco’s revised proposal in respect of the completion dates for both the MSEC and MISEC auctions.

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

Implementation is not required to enable Transco 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 3(5) or the statement furnished by Transco under Standard Condition 3(1) of the Licence

Not applicable.

14. Programme of works required as a consequence of implementing the ModificationProposal

No program of works is required as a consequence of implementing the Modification Proposal.

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

If approved, this proposal would require implementation prior to 30 June 2001 as this is the latest date specified in the Network Code by which Transco must determine the MSEC quantities at each ASEP for the next capacity period.

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 B – System Use and Capacity

Amend paragraph 2.2.4 to read as follows:

"N is, subject to paragraph 2.2.8 the aggregate number of days which fell in the relevant calendar month in the 36 month period ending on the 31st May in the Preceding Capacity Year."

Amend paragraph 2.6.2(a) to read as follows:

"2.6.2(a) the two dates ('**invitation dates**' each of which shall be a Business Day) on which applications pursuant to such invitation may be made, the last of which shall not be later than 15th September in the Preceding Year; and the period between each such invitation date shall be not less than two Business Days;"

TRANSITION DOCUMENT PART II

Paragraph 8.1.3 – amend to read as follows:

"8.1.3 B.2.3 In respect of the Gas Year 2001/2002:

(1) the reference in Section B.2.3.1 to each calendar month in the Gas Year shall be deemed to be a reference to the calendar month October 2001 to March 2002 (inclusive);

(2) by not later than 31 January 2002 Transco will invite applications for the Determined System Entry Capacity in respect of each Aggregate System Entry Point for the calendar months April 2002 to September 2002 (inclusive);

(3) for the purposes of paragraph (2), Section B.2.3 shall apply separately in respect of applications made for Monthly System Entry Capacity for the calendar month referred to therein.

Paragraph 8.1.4 – amend to read as follows:

"8.1.4 B.2.6 In respect of the Gas Year 2001/2002:

(1) the reference in Section B.2.6.1 to each calendar month in the Gas Year shall be deemed to be a reference to the calendar month October 2001 to March 2002 (inclusive); and

(2) by not later than [15] February 2002 Transco will invite applications for Monthly Interruptible System Entry Capacity in respect of each Aggregate System Entry Point for the calendar months April 2002 to September 2002 (inclusive); and

(3) for the purposes of paragraphs 1 and 2, Section B.2.6 shall apply separately in respect of applications made for Monthly Interruptible System Entry Capacity for the calendar months referred to therein."

Signed for and on behalf of Transco.

Signature:

Tim Davis
Manager, Network Code

Date:

Gas and Electricity Markets Authority Response:

> In accordance with Condition 7 (10) (b) of the Standard Conditions of Public Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0465**, version **1.0** dated **27/06/2001**) 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 <u>(whether such approval is actual or deemed by effluxion of time)</u> 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, <u>had it not been repealed, would</u> 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) <u>or 2(2)(b)(ii)</u> 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.