# TRANSCO NETWORK CODE MODIFICATION PROPOSAL No. 0441

"Termination of User in Receivership"

Version 3.0

**Date:** 01/12/2000

**Proposed Implementation Date:** 01/01/2001

**Urgency:** Non-Urgent

## Justification

The current arrangements in the Network Code Supplement, Energy Balancing Credit Management, stipulate the measures which can be taken following a Users failure to pay a Cash Call.

On failing to pay a Cash Call Transco is entitled to give Termination Notice which will have the effect of removing the Users ability to operate under the Network Code.

Section V 4.3 of the Network Code considers the issue of termination and identifies events or circumstances where upon the User can be categorised as being in default. Paragraph 4.3.3 states that in such circumstances where a User is in default, Transco may give Termination Notice. In other words, consistent with the Supplement the issuing of a Termination Notice is not mandatory and is at the discretion of Transco.

The issue of Receivership is cited in Section V4.3.1 of the Network Code and is included as one of the events or circumstances contributing to the classification of a User as a defaulting User and, henceforward, empowering Transco with the option to give Notice of Termination.

In the case of the Energy Balancing Debt, Transco is financially neutral to the payment or otherwise of outstanding invoices. For this reason the Energy Balancing Credit Committee was established to provide the impacted parties, the Shipping community, with limited powers to control debt escalation.

The Powers and Duties of the Committee are outlined in Section 2.2 of the Energy Balancing Credit Rules, most pertinent of which relate to the discontinuation, or otherwise, of recovery action regarding Energy Balancing Debt. These powers are consistent with the Enforcement and Recovery Steps provided for in Section 3.4 of the Supplement.

The community through the EBCC was required to "test" the robustness of the Code during a recent incident involving a Shipper in receivership. Whilst in receivership, it was apparent that the relevant administrative receiver was unwilling to finance the Energy Balancing Debt which continued to accrue during the period the company remained in receivership.

If a Receiver wishes to sell a business as a going concern, it is normal practice that he makes provisions for contractual supplies. At present, debt is incurred by the Community, whilst the party appointing the Receiver gains increasing benefit.

We believe that it is in the interest of the industry to protect the Users from exponential and uncontrollable accrual of Energy Balancing Debt and suggest that the Network Code should be modified to halt such debt escalation.

**Nature Of Proposal**

The discretionary powers afforded to Transco relating to the Notice of Termination should be replaced with a mandatory obligation to issue such a notice following the notification of a User entering into receivership.

We propose that a Termination Notice is issued one business day after Transco is notified of a receiver being appointed, unless, a written commitment, in a form satisfactory to the EBCC, is provided to Transco, by the receiver, that all Energy Balancing Debt accrued from the date of appointment of the receiver will be paid. In such an event, normal enforcement steps will be pursued as provided for in the Supplement.

**Purpose of Proposal**

Implementation of this proposal would ensure that debt escalation is stymied and will encourage the proper allocation of any costs incurred whilst the User remains in receivership.

**Consequence of not making this change**

The community will continue to be burdened with the risks associated with a User unable to fulfil its obligations regarding the payment of Energy Balancing Debt. The smearing of these uncontrolled costs may seriously jeopardise an individual Users ability to operate in the UK Gas Market.

**Area of Network Code Concerned**

Network Code Supplement: Energy Balancing Credit Management
Section 3: Payment of Energy Balancing Invoices

**Proposer's Representative**

Brian Horton (TotalFinaElf Gas and Power Ltd)

**Proposer**

Nick Wye (TotalFinaElf Gas and Power Ltd)