

## **OFGEM DECISION LETTER No. 0524**

### **"Shipper Responsibilities in the Event of the Appointment of a Supplier of Last Resort" Version 1.0**

To : Transco, Shippers, & other interested parties

Direct Dial : 020 7901 7256

06 June 2002

Your Ref:

Our Ref: Net/Cod/Mod/0524/IO/FG

Dear Colleague

#### **Re: Modification Proposal 0524 'Shipper Responsibilities in the Event of the Appointment of a Supplier of Last Resort'**

Ofgem has considered the issues raised in Modification Proposal 0524 "Shipper Responsibilities in the Event of the Appointment of a Supplier of Last Resort". Ofgem has decided not to direct Transco to implement the modification because it does not believe the proposal in its current form will better facilitate the relevant objectives of Transco's Network Code (NWC). This letter explains the background to the modification proposal and gives Ofgem's reasons for making its decision.

#### **Background to the proposal**

Ofgem, Transco, shippers and gas suppliers formed a Supplier of Last Resort (SoLR) Working Group which met during 2001 to discuss the arrangements for selecting and appointing a SoLR. The group also discussed the current arrangements by which a SoLR's shipper could balance its new portfolio and identified a number of key areas requiring industry consideration.

At the moment the new sites can either be transferred to the shipper by means of Transco's bulk transfer mechanism or through the normal confirmation process. Transco has explained that both these options would take a considerable time to complete, particularly for a large portfolio. In addition, the new User may not have access to the details of the portfolio until the transfer of all supply points is completed. Ofgem also understands that many shippers are unable to operate the bulk transfer mechanism. In the meantime there is currently nothing in Transco's NWC by which the new shipper can be held liable for transportation or balancing charges. This exposes the shipping community and Transco to potentially large costs.

The SoLR can charge its new customers its deemed contract rate from the date of its appointment. Ofgem considers that the SoLR should therefore be liable for all relevant charges from that date. This position is already recognised in the electricity Balancing and Settlement Code. Transco has explained a variety of options to the Working Group; this Modification proposal reflects one of the options. Other options (such as leaving Transco to take balancing action but allocating all imbalance charges for the portfolio to the SoLR) were considered unsuitable since they would expose customers to the possibility of very high prices and could therefore deter suppliers from volunteering to be a SoLR.

During Working Group meetings participants expressed support for the principle of allowing the SoLR's shipper as much autonomy as possible in deciding how to balance its portfolio and the rate at which customers were transferred.

On 11 November 2001 BGT raised Modification Proposal 0503 'Network Code Implications of the Appointment of a SoLR'. The Modification established a Review Group to consider the consequences of the appointment of a SoLR on its shipper's responsibilities for the supply of gas and for energy balancing. During a Review Group meeting BGT tabled a draft modification which Transco adopted and subsequently submitted as Modification Proposal 0524.

### **The Modification Proposal**

Modification 0524 was proposed on 14 January 2002. The modification proposes that responsibility for energy balancing and transportation should transfer to the User shipping for the appointed SoLR with effect from the date of appointment of the SoLR. From this date, the User would incur energy balancing and transportation charges for the failed supplier's portfolio.

The modification proposes that in order to manage energy balancing actions between the date of appointment of an SoLR and the completion of the portfolio transfer, Transco will act as agent for the terminated portfolio on behalf of the new User. The new User will be responsible for securing gas to supply the portfolio by trading gas at the NBP with the terminated account. Quantities will be determined from estimates of DM load and the NDM allocation (as revised each day) and will be provided by Transco to the new User on a 'best endeavours' basis.

When the transfer of the portfolio has taken place, Transco will recover any imbalance costs incurred during this interim period from the new User. Any reconciliation amounts applying to the portfolio from the appointment date will accrue to the new User.

### **Respondents' views**

Shippers were generally supportive of the underlying principle of the modification, but raised a number of specific concerns. These are set out below. Ofgem considers that many of the concerns are justified and, where appropriate, has indicated this in the text. However these comments should be read in the context of Ofgem's overall views expressed in the relevant section below.

#### **1. Legal drafting does not reflect the scope of the modification**

Shippers raised concerns that the legal text accompanying Transco's modification does not reflect the content of the Modification Proposal. In particular, shippers are concerned that the NBP Trade mechanism which suggests that Transco will act as an agent on behalf of the new user is not referenced in the legal text.

Ofgem shares shippers' concerns in this respect. It will be crucial for a SoLR's shipper to clearly understand how it will carry out energy balancing requirements. Any ambiguity and confusion about the process may deter suppliers from volunteering to be a SoLR and could cause operational difficulties for a SoLR's shipper. Therefore it is important that the legal text accompanying this modification closely reflects the scope and content of the Modification Proposal.

2. Method by which User will balance the portfolio through NBP trades is not documented

Shippers raised concerns that Transco has not established, tested, validated or documented the process and procedures to support the NBP trade mechanism. If the procedures do not work the risks faced by the User in managing the failed supplier's portfolio will increase.

In its final modification report, Transco states that it does not believe it is necessary to incorporate the operational procedures for NBP trades in the Network Code as they already exist as contingency arrangements outside of the Code and no new systems are required. Transco suggests in its final modification report that these procedures were developed within the industry SoLR Working Group. The procedures were discussed in the Working Group when Transco presented a high level overview of its proposals but they were not discussed in detail, nor were any documents detailing the proposed procedure issued to the Group. Ofgem is concerned that because all shippers did not attend the Working Group, many of them may be unfamiliar with the proposed NBP Trade mechanism. It is crucial for all shippers to fully understand this process for a SoLR's shipper. We believe that Transco should therefore develop and produce a document detailing its NBP Trade mechanism so that shippers can consider its implications in full as part of any future modification proposal.

3. SoLR end to end testing

Transco's final modification report suggests that Ofgem is expected to undertake end to end testing of the SoLR appointment process. Ofgem intends to run a test exercise of the selection and appointment of a SoLR only; we do not intend to test the events that would occur after the appointment. For the avoidance of doubt, the proposed exercise will not test the procedures by which Transco intends to act as agent on behalf of the new User.

4. Effect of the appointment of more than one SoLR

One respondent suggests that this modification does not cover the eventuality of more than one SoLR (and potentially more than one User) being appointed. In its final modification report Transco believes that it is not necessary to incorporate any additional legal text to support the appointment of more than one SoLR as the procedures would remain the same. Transco suggests that agreement would need to be made regarding the NDM split of the portfolio, which could be based on the AQ for input purposes, and that while the underlying process would remain the same, this would involve significant additional administration effort by all parties.

In the event that Ofgem appoints more than one SoLR each shipper of the SoLR would need to understand how it will manage its energy balancing obligations. Therefore, Transco should develop its NBP Trade procedures to accommodate the appointment of more than one SoLR explaining how this process will support such a scenario.

5. Separation of financial and registration responsibility

Shippers generally supported the principle of separating financial and registration responsibilities in Transco's network code. Shippers suggest that the separation of financial and registration responsibilities provides better protection for the shipping community from the effects of energy balancing smearing, and reduces Transco's exposure to financial loss.

Ofgem supports this aspect of the modification proposal as it removes risks to Transco and the shipping community which may arise under the current rules in the event of SoLR appointment.

## **Ofgem's view**

Ofgem's preference is that Transco should not act as an "agent" for the incoming shipper. Ofgem is concerned that, in considering new processes, there appears to have been no exploration of the possibility of providing a SoLR's shipper with direct access to information about the failed shipper's portfolio so that the shipper would not have to rely on Transco acting as an agent. Ofgem does not, therefore, consider that the proposal will better facilitate the efficient and economic operation of Transco's pipe-line system, nor will it better facilitate the securing of effective competition between relevant shippers and between relevant suppliers.

Transco has previously told the Working Group that there are "legal reasons" why this information cannot be provided to the shipper. In response to subsequent requests from Ofgem for clarification of these problems Transco has told Ofgem that they fall into three areas:

- Confidentiality

Transco says that Section V5 of the Network Code requires it to keep confidential any information it holds relating to the affairs of a User that it has obtained pursuant to the operation/ implementation of the Network Code. This requirement survives the termination of the User from the Network Code for a period of 3 years.

Transco has suggested that an amendment to the Network Code such that the terminated User is deemed to have provided its written consent for disclosure of its confidential information relating to its portfolio upon the appointment of an SoLR could resolve this issue.

- Data Protection

Transco believes that it may be possible to provide information about meter numbers and gas consumption to a SoLR's shipper. But the provision of address details, and in particular sensitive personal information relating to the occupier, such as whether that owner/occupier is blind/deaf/disabled, may be caught by the provisions of the Data Protection Act.

Transco has suggested that an amendment to the Network Code such that the terminated User has the consent of the relevant individual to ask Transco to provide that information to a third party. It suggests that the Network Code should reflect that upon the appointment of the SoLR, the terminated User is deemed (for the purposes of the Data Protection Act) to direct Transco to provide that information to the SoLR.

- Accuracy of information

Transco has explained that historical information may vary from future trends and therefore Transco cannot guarantee demand forecasts. Transco says that it is, to some extent, reliant on the shipper for the provision of information and cannot and should not be held responsible for the accuracy or completeness of the information it will be providing to the SoLR. Transco considers that appropriate disclaimers and exclusions for misrepresentation would need to be included.

It should be borne in mind that a SoLR has a deemed contract with each of the failed supplier's customers from the time it is appointed. It therefore seems reasonable that the information in data flows and files that is provided by Transco to a shipper as part of the normal transfer

process should also be provided to a SoLR's shipper from the date of appointment. This would mirror the position in electricity under the BSC. Ofgem would expect that any future modification proposal concerning the arrangements for a SoLR's shipper fully considers this option and makes clear that there is no guaranteed role for Transco.

However, in the event that there is no other way for a shipper to balance other than by using Transco as an agent, the procedures to be followed and the responsibilities of both parties must be clear. Although Transco has tabled its proposals for NBP trades, a number of shippers who responded to this modification raise valid concerns about the operational workings of this proposal. It is for Transco to address these concerns (and others expressed in this letter and by respondents) so that all parties involved with a SoLR understand fully the processes that may be used.

Ofgem supports measures to separate the financial and registration responsibilities of a SoLR's shipper. But Ofgem does not believe that in its present form this Modification Proposal better facilitates Transco's relevant objectives.

### **Ofgem's Decision**

Ofgem has therefore decided to reject Modification Proposal 0524. Ofgem supports measures to separate financial and registration responsibilities. However, bearing in mind that a SoLR's customers will all have deemed contracts, Ofgem does not consider that all the options have been fully explored. In particular Ofgem considers that there has been insufficient consideration given to the provision of information direct to the SoLR's shipper. Ofgem considers that the processes used in gas should mirror those under the BSC. However if this is not possible the procedures under which Transco might act as agent for the management of the failed supplier's account requires further discussion, documentation and understanding by shippers (and suppliers).

I hope this letter clarifies the reasons why Ofgem has decided to reject the modification proposal. However should you require any further information about this subject, please contact Fran Gillon (020 7901 7283) or James Richardson (020 7901 7027).

Yours sincerely

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**Director, Supply**