

OFGEM DECISION LETTER No. 0525

"Termination of User who seeks or becomes subject to the appointment of an administrator, liquidator, conservator, trustee or similar official for it or for all or substantially all of its assets."

Version 1.0

Direct Dial: 0207-901-7491
06 June 2002

Transco, Shippers and Other Interested Parties

Your Ref:
Our Ref: Net/Cod/Mod/525

Dear Colleague,

Modification Proposal 0525: 'Termination of User who seeks or becomes subject to the appointment of an administrator, liquidator, conservator, trustee or similar official for it or for all or substantially all of its assets'

Ofgem has considered the issues raised in Modification Proposal 0525 'Termination of User who seeks or becomes subject to the appointment of an administrator, liquidator, conservator, trustee or similar official for it or for all or substantially all of its assets'. Ofgem has decided to direct Transco to implement the modification because we believe that this proposal will better facilitate the achievement of Transco's relevant objectives.

In this letter we explain the background to the modification and give the reasons for making our decision.

Background to the proposal

The recent implementation of Modification 0475 "Termination of User in Receivership" was an initial step towards protecting the community from increasing debt exposure once a receiver is appointed by introducing the requirement for the receiver to provide adequate assurances to the Energy Balancing Credit Committee (EBCC) in respect of all Energy Balancing debt accruing from and including the date of appointment. This proposal widens the scope of Modification 0475 to include assurances from an "administrator, conservator, trustee, liquidator or similar official" in addition to a receiver.

The modification proposal

It is proposed that if a shipper seeks or becomes subject to the appointment of a receiver, administrator, liquidator, conservator, trustee or similar official, unless a written commitment is provided that is satisfactory to the Energy Balancing Credit Committee (EBCC), Transco will be obliged, unless directed otherwise by the EBCC, to issue a Termination Notice to a User. This written commitment is an assurance from the receiver, administrator, conservator, trustee, liquidator or similar official that it will pay Transco all the energy balancing debt accrued since the date of appointment. It further

seeks to ensure that the Termination Notice will not be issued in less than two business days of Transco being notified of any such appointment.

Respondents' views

There were six responses to this modification proposal, all of which supported its implementation. The responses acknowledged that the benefits gained from the implementation of Modification 475 have been undermined due to the unintentional restrictions that Section V4.3 of Transco's network code currently imposes on Transco in respect of its termination obligations.

The responses refer to the recent events surrounding Enron and suggest that the original modification needs better definition to include circumstances when an official, other than a receiver, is appointed to a company. It is claimed that this proposal makes explicit the intent underlying the original modification proposal, 475 and will provide the community with extra protection against accumulating energy balancing debt.

Transco supports the implementation of the modification but raised a number of points relevant to the legal drafting. The first issue concerned the reference to conservator and trustee, neither of which are currently included within the scope of Section V4.3. Transco proposes to extend the scope of Section V4.3.1 (e) to accommodate individual bankruptcy scenarios by making reference to the appointment of a Trustee. Transco intends to exclude a specific reference to the appointment of a conservator as such official is not appointed under English law, and instead suggests the inclusion of a clause that envisages insolvency events in foreign jurisdictions. In addition, Transco suggests that a reference to "a liquidator" is not included within Section V4.3.3.. Transco reason that an administrator, receiver and trustee could continue operating the Defaulting User's business as a going concern, a liquidator is more likely to sell the assets and accordingly it is not appropriate to request a liquidator to provide an undertaking in respect of ongoing debt.

Ofgem's view

Ofgem welcomes the community's commitment to reforming the current credit arrangements regarding energy balancing and to this end accepted modification 475. Subsequent events have led the industry to take the view that the original modification requires better definition in that there are circumstances where rather than a receiver, some other such official is appointed.

Ofgem agree that the original drafting to modification 475, whilst unintentional, does limit the circumstances in which the EBCC can seek assurances regarding energy balancing debt from a shipper in financial difficulties. Ofgem recognise the role of the EBCC in seeking such assurances on behalf of the community and deciding whether to instruct Transco to issue a termination notice. We therefore support the implementation of this proposal and following further consultation with the industry agree to the proposed changes suggested by Transco.

However, Ofgem would bring the community's attention to the recent consultation paper 'Arrangements for gas and electricity supply and gas shipping credit cover' published in March 2002. It is hoped that this consultation will lead to the introduction of changes to improve the credit arrangements in both the gas and electricity sector.

Ofgem's Decision

We believe this modification proposal will assist Transco in better fulfilling its relevant objectives and further clarifies the procedure for the EBCC when an administrator or similar official is appointed to a shipper in financial difficulties. Accordingly, Ofgem has directed Transco to implement this modification.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

Nick Simpson
Director, Industry Code Development