

National Grid Transco – Potential sale of gas distribution network business.

Publication of NGT's initial drafting of proposed new NTS-GT licence and DN-GT licence

Background

On 2 September 2004, Ofgem published a consultation document on the proposed modifications to Transco plc's (Transco) existing gas transporters (GT) licence and, if granted, each new additional GT licence in the context of the proposed sale by Transco of one or more of its local gas distribution networks (DNs)¹. The consultation document stated that Ofgem would review the need to modify Transco's existing GT licence and, if granted, the new additional GT licences as part of the DN sales process at three separate stages:

- ◆ The section 23 notice;
- ◆ The section 8AA consent; and
- ◆ As part of the consent to disposal of the relevant DN assets under the Amended Standard Condition 29 (Disposal of Assets) of Transco's existing GT licence.

The consultation document explained that in order to assist respondents, National Grid Transco plc (NGT) would shortly be providing to Ofgem (for publication) first drafts of the proposed licences for the National Transmission System (NTS) and the DNs. It was stated that Ofgem would advise respondents at the time of publication of these draft licences of the process to be followed if they wish to submit comments on these documents. It was explained that these draft licences would be based on the proposed structure set out in the consultation document.

¹ National Grid Transco – Potential sale of gas distribution network businesses. Initial thoughts on restructuring of Transco plc's Gas Transporter Licences. Consultation Document. September 2004. 215/04.

NGT has now prepared these draft licences incorporating the possible changes which NGT envisage being made at the section 23 stage as set out in the September 2004 document. Ofgem is publishing these draft licences (as provided by NGT) with this document in order to assist respondents in commenting on the issues relating to the proposed modifications set out in the consultation document.

The draft licences are intended to provide NGT's initial high level view of some of the likely content and structure of Transco's existing GT licence and, if granted, the new additional GT licences post the section 23 stage. The draft licences are not intended to be comprehensive and do not incorporate changes which the consultation document and/or NGT envisage being made as part of the section 8AA consent process or as part of the consent to disposal of DN assets. The draft licences are merely intended to give a flavour of some of the types of obligations the NTS and the DNs may be under post the section 23 stage should the proposed transaction proceed. The draft licences do not replace the section 23 modification process but rather are designed to allow respondents an opportunity to comment in advance on some of the proposed changes which NGT expects to be made as part of the section 23 process.

The Gas and Electricity Markets Authority (the Authority) takes no responsibility for the accuracy or completeness of the draft licences and gives no assurance that all modifications which will be made at the section 23 stage, if the proposed transaction proceeds, have been incorporated by NGT into the attached draft licence.

In publishing the draft licences which have been prepared by NGT, it is important to make clear that there can be no expectation on the part of NGT, Transco, potential DN purchasers or any other interested parties either as to what the Authority's final decision in relation to the proposed transaction may be, or as to the regulatory framework which may be implemented if the Authority consents to the proposed transaction.

The form and content of the draft licences which have been prepared by NGT are not binding on the Authority. The publication of the draft licences by Ofgem does not mean that the Authority endorses the drafts. Publication of the draft licences by Ofgem is not to be construed as granting any rights or imposing any obligations on the Authority. The Authority's discretion in this matter will not be fettered by the contents of the draft licences.

As explained in the consultation document, the proposed transaction is not a regulatory initiative but a commercial decision taken by Transco. Accordingly, for the avoidance of doubt the proposed modifications as set out in the draft licences will not apply to GT licences held by independent GTs and will apply only to Transco's existing GT licence, and, if granted, the additional new GT licences.

Attachments

The following documents as prepared by NGT are attached. In order to make the attachments accessible, they have been separated by NGT into two sections: the draft NTS-GT licence and the draft DN-GT licence. As some conditions will be standard to both the NTS-GT and the DN-GT licences there will be some repetition of conditions. In order to understand the structure of the draft licences, references should be made to Chapter 5 of Ofgem's consultation document.

Draft NTS-GT licence

Attachment 1 consists of the Standard Conditions for GTs as designated by the Secretary of State and subsequently modified through the Collective Licence Modification process. It is proposed that this attachment will form the first part of the licence;

Attachment 2 contains:

- (a) The Standard Special Conditions applicable to both NTS and DN licensees (Part A (only));
- (b) The Standard Special Conditions applicable to NTS licensees only (Part A);
- (c) The Special Conditions applicable to the NTS licensee owning and operating the current Transco NTS (Part B);
- (d) The Standard Special Conditions applicable to DN licensees only (Part A) (not reproduced in this licence as not relevant to an NTS licensee); and
- (e) Schedules 1, 2 and 3 to the licence.

Attachment 3 contains those provisions of Transco's existing revenue restriction condition (Special Condition 28B) which are applicable to the NTS price control only. Once drafting

is finalised it will be included in the Special Conditions applicable to the NTS licensee only (referred to at (c) above).

Draft DN-GT licence

Attachment 4 consists of the Standard Conditions for GTs as designated by the Secretary of State and subsequently modified through the Collective Licence Modification process. This attachment will form the first part of the licence.

Attachment 5 contains:

- (a) the Standard Special Conditions applicable to both NTS and DN licensees (Part A only);
- (b) the Standard Special Conditions applicable to NTS licensees only (Part A) (Not reproduced in this licence as not relevant to a DN licensee);
- (c) the Special Conditions applicable to the NTS licensee owning and operating the current Transco plc NTS (Part B) (Not reproduced in this licence as not relevant to a DN licensee);
- (d) the Standard Special Conditions applicable to DN licensees only (Part A);
- (e) the Special Conditions applicable to a particular DN licensee (Part B); and
- (f) Schedules 1, 2 and 3 to the licence.

Attachment 6 contains those provisions of Transco's existing revenue restriction condition (Special Condition 28B) which are applicable to the DN Price control only. Once drafting is finalised it will be included in the special conditions applicable to the DN licensee in question (referred to at (e) above).

It should be noted that within the attached draft NTS-GT and DN-GT licences prepared by NGT, certain provisions appear in bold italic text. This approach reflects the approach that has been taken by NGT in producing a conformed copy of Transco's existing GT licence (which was published in conjunction with Ofgem's consultation document on 2 September and is available on Ofgem's website). The bold italic text shows those provisions of the

licence which have been amended individually for Transco (i.e otherwise than via the Collective Licence Modification process) and which accordingly differ from the standard designated drafting. In this context, the retention of the bold text helps to demonstrate why a particular condition is proposed as a Standard Special Condition rather than a designated Standard Condition.

Way forward

Ofgem invites views on its proposals contained in the informal consultation document and on the draft licence that has been prepared by NGT, to be received by close of business on 29 September 2004.

Respondents are requested to provide views in a timely manner. Responses should be addressed to:

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Electronic responses may be sent to tracey.hunt@ofgem.gov.uk

Respondents are free to mark their reply as confidential, although we would prefer, as far as possible, open responses that can be placed in the Ofgem library. Ofgem would also prefer that non-confidential responses are sent electronically so that they can be placed on the Ofgem website.

If you wish to discuss any aspect of this paper, Catherine Saponar (telephone 020 7901 7207) would be pleased to help.