

NOTICE UNDER SECTION 23(3) OF THE GAS ACT 1986

The Gas and Electricity Markets Authority (“the Authority”) hereby gives notice pursuant to section 23(1)(b) and 23(3) of the Gas Act 1986 (“the Act”) as follows:

1. The Authority proposes to modify all gas transporter licences that are granted, or treated as granted, pursuant to Section 7 of the Act, in respect of standard licence condition (SLC) 3.
2. The reasons why the Authority proposes to make this licence modification are as stated in the revised licence fee cost recovery principles consultation document¹ published in March 2005. The changes are proposed to deal with:
 - a. British Electricity Trading and Transmission Arrangements (BETTA);
 - b. Operation of Ofgem’s five year cost control regime (RPI-X); and
 - c. Updating relevant sections of text.
3. The changes to Ofgem’s licence fee principles as a result of BETTA do not directly affect the drafting of the condition in gas transporter licences.

RPI-X

4. Ofgem announced in 2004 that it would impose a cost control regime, RPI-X for a period of five years from 1 April 2005. The new cost regime is designed to bring about a progressive year on year downward trend with regards to the licence fee collection; the effect of these amendments is that limited fiscal adjustments relating to Ofgem’s costs will be made after five years rather than annually; this regime should give Ofgem limited flexibility to undertake certain projects. Further details of the new cost regime are given in the March 2005 consultation document and subsequent changes are set out in an Open Letter following the March consultation². These amendments are reflected in SLC3.2(d) and the definition of estimated costs and relevant proportion.

¹ Revised licence fee cost recovery principles – consultation document March 2005, reference 87/05

² Open Letter: Revised Licence Fee cost recovery principles, 14 June 2005

Updating the text

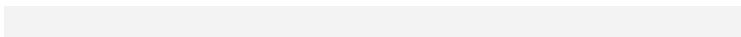
5. In addition to the above, a number of amendments are proposed to SLC 3 to bring the licence up to date. For example, references to the Secretary of State's costs in the current SLC3.2(d) and the reference to the Director General of Electricity Supply in SLC3.2(f) have been removed, as has the requirement in the current SLC 3.5 to submit a certificate to the Authority on a yearly basis.
6. Changes originally proposed in the consultation document to deal with Competition Commission costs in relation to code modification appeals and licence modification references have been included in this Statutory Notice for the sake of completeness. However, all changes to the licences relating to the Competition Commission costs are subject to a separate consultation and statutory process sponsored by the DTI.
7. The effect of the proposed modification is to replace the current SLC 3 with a new SLC 3 which is annexed to this notice.
8. Relevant licence holders for the purposes of this Notice are all holders of gas transporter licence at the relevant time with Standard Condition 3 in force.
9. Any representations or objections to the proposed licence modification may be made on or by 8 November 2005 to Paul Heseltine Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to paul.hestletine@ofgem.gov.uk.

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Roy Field

Duly authorised on behalf of the Authority

10/10/2005



Key: Unmodified text
Inserted text (proposals made by DTI)
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Gas Transporter Licence

Condition 3. Payments by Licensee to the Authority

1. The licensee shall, at the times stated, pay to the Aauthority such amounts as are determined by or under this condition.
2. In respect of each relevant year at the beginning of which the licensee holds this licence, the licensee shall pay to the Authority the aggregate of:
 - (a) an amount which is the relevant proportion of the estimated costs of the Authority during the year in question;
 - (b) an amount which is the relevant proportion of the estimated costs of the Consumer Council during the year in question;
 - (c) an amount which is the relevant proportion of the estimated costs incurred in the previous relevant year by the Competition Commission in connection with any references ~~made~~ to it with respect to ~~the~~ this licence or any other ~~gas transporter~~ licence granted under the Act or the Electricity Act 1989; and
 - ~~(d)~~ (d) an amount which is the relevant proportion of the difference (being a positive or negative amount), if any, between:
 - (aa) any costs estimated by the Authority ~~or, in the case of sub-paragraph 2(d), the Secretary of State~~ in the previous relevant year under sub-paragraphs 2(a), (b), and (c), ~~and (d)~~; and
 - (bb) the actual costs of the Authority, the Consumer Council, and the Competition Commission (in connection with ~~that~~ references of the type referred to in sub-paragraph 2(c)) ~~and the Secretary of State~~ for the previous relevant year or, in the case of the Competition Commission, for the relevant year prior to the previous relevant year.
 - ~~(f)~~ (f) ~~in respect of the relevant year ending on 31 March 2002, an amount which is the relevant proportion of the actual unrecovered costs of the Director General of Electricity Supply and the Relevant Consumers' Committees.~~
3. The amounts determined in accordance with paragraph 2 shall be paid by the licensee to the Authority in two instalments, with:

- (a) the first instalment being due for payment by 30 June in each relevant year; and
- (b) the second instalment being due for payment by 31 January in each relevant year

provided that, in each case, if the Authority has not given notice of the amount of the instalment due at least 30 days before the payment date stated above, the licensee shall pay the amount due within 30 days from the actual giving of notice by the Authority to the licensee (whenever notice is given).

- 4. ~~Where~~if the licensee fails to pay the amount determined in accordance with paragraph 2 within 30 days of the ~~due~~payment date determined in accordance with set out in paragraph 3, it shall with effect from that date pay simple interest on ~~that~~the amount at the rate which is from time to time equivalent to the base rate of NatWest Bank plc or, if there is no such base rate, such base rate as the Authority may designate for the purposes hereof.

- ~~5. In relation to any data or information specified by the Authority in a direction given for the purposes of this condition generally, the licensee shall submit a certificate to the Authority, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution. Such certificate shall be submitted to the Authority each year on the date specified by the Authority. Each certificate shall be in the following form—~~

~~“In the opinion of the directors of [the licensee], all data and information provided to the Authority on [date provided to the Authority] for the purposes of enabling the Authority to calculate the licence fee payable by [the licensee] pursuant to standard condition 3 (Payments by the Licensee to the Authority) is accurate.”~~

- 65. In this condition:
“estimated costs”

means costs estimated by the Authority as likely to be or have been :

- (a) the costs of –
 - (i) the Authority calculated in accordance with principles determined by the Authority for the purpose of this condition generally (after consultation with the licensee and others likely to be affected by the application of such principles) and notified to the licensee; and
 - (ii) the Consumer Council; and
- (b) the costs incurred by the Competition Commission in connection with references to it in respect of this licence or any other licence granted under the Act or the Electricity Act 1989, such estimate having regard to ~~the~~ any views of the Competition Commission;

“relevant proportion”

means the proportion of the costs attributable to the licensee in accordance with principles determined by the Authority for the purposes of this condition generally (after consultation with the licensee and others likely to be affected by the application of those principles) and notified to the licensee or, in relation to costs of the Competition Commission, in accordance with any direction given by the Competition Commission under section 177(3) of the Energy Act 2004 or, in the absence of such direction, in accordance with such principles; and

“relevant year”

means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.

~~“Secretary of State’s costs”~~

~~means costs estimated by the Secretary of State as likely to be his costs in relation to:~~
~~(a) the establishment of the Authority and the Consumer Council; and~~
~~(b) Schedule 7 to the Utilities Act~~

~~2000.~~

~~7. In sub paragraph 2(f) of this condition:~~

~~“Director General of —
under
—Gas Supply”~~

~~means the office previously established
section 1 of the Act;~~

~~“Gas Consumers’
Council”~~

~~means the body previously established by
the Director General of Gas Supply under
section 2 of that Act~~