

MODIFICATION OF CONDITION IN LICENCES GRANTED UNDER SECTION 23(3) OF THE GAS ACT 1986

Whereas –

1. The companies to whom this document is addressed (“Licence Holders”) have been granted a gas transporter licence (“a Licence”) under section 7 of the Gas Act 1986 subject to the conditions contained in the licence;
2. In accordance with section 23(3) of the Act the Gas and Electricity Markets Authority (“the Authority”) gave notice that it proposed to make modifications to standard licence condition (SLC) A3 of the Licence and required that objections or representations to the modification were made before or on 8 November 2005. The Authority’s reasons for making this modification are set out in Appendix 1 to this document;
3. In accordance with section 23(4) of the Act the Authority gave such notice of its intention to make modifications to the Secretary of State and has not received a direction not to make the modification;
4. By the close of the consultation period, the Authority received two responses, none of which were marked as confidential. Both responses had no objections. The responses have been placed on the Ofgem website¹. Now in accordance with the powers contained in section 23 of the Act, the Authority hereby modifies the standard licence condition with effect from 20 December 2005 by replacing the current SLC A3 with an amended A3 which is shown in Appendix 2 to this notice.

.....

Roy Field
Chief Operating Officer
Duly authorised on behalf of the Authority

20 December 2005

¹ www.ofgem.gov.uk

Appendix 1: Reasons for the Licence Modifications

1. The reasons why the Authority proposed to make this licence modification were as stated in the revised licence fee cost recovery principles consultation document² published in March 2005. The changes were 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.
2. 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

3. 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 issued by Ofgem following the March consultation³. These amendments are reflected in SLC3.2(d) and the definition of estimated costs and relevant proportion.

Updating the text

4. In addition to the above, a number of amendments were proposed to SLC3 to bring the licence up to date. For example, references to the Secretary of State's costs in the old 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 an annual basis.

² Revised licence fee cost recovery principles – consultation document March 2005, reference 87/05

³ Open Letter: Revised Licence Fee cost recovery principles, 14 June 2005.

5. Changes originally proposed in the consultation document to deal with Competition Commission costs in relation to code modification appeals and licence modification references were included for the sake of completeness. However, all changes to the licence relating to the Competition Commission's costs are subject to a separate consultation and statutory process sponsored by the DTI.

6. The effect of the proposed modification is to replace the current SLC A3 with a new SLC A3 which is shown as an appendix to this notice.

Appendix 2: Licence modifications

Gas Transporter Licence

Condition 3. Payments by Licensee to the Authority

1. The licensee shall, at the times stated, pay to the Authority 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 references made to it with respect to the licence or any other gas transporter licence; and
 - (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 in the previous relevant year under sub-paragraphs 2(a), (b), and (c); and
 - (bb) the actual costs of the Authority, the Consumer Council and the Competition Commission (in connection with that reference) for the previous relevant year or, in the case of the Competition Commission, for the relevant year prior to the previous relevant year.
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 year; and
 - (b) the second instalment being due for payment by 31 January in each 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 the licensee fails to pay the amount determined in accordance with paragraph 2 within 30 days of the due date set out in paragraph 3, it shall pay simple interest on 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 this condition:
“estimated costs” means costs estimated by the Authority as likely to be:
 - (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

- (b) (ii) the Consumer Council; and the costs incurred by the Competition Commission, such estimate having regard to the 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.