



ESP Pipelines Ltd, Shippers and other parties.

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26 October 2005

Dear Colleague,

Modification Proposal ESPP112: 'Harmonise Network Code Modification Rules'.

Ofgem¹ has considered the issues raised by this modification proposal and has decided to direct ESP Pipelines Ltd (ESPP) to implement the proposal as we believe that it will better facilitate the relevant objectives of ESPP's Network Code as defined in standard condition 9 of its GT Licence.

Background

The GT licence requires ESPP to establish transportation arrangements consistent with its duties under section 9 of the Gas Act 1986 and to facilitate the achievement of the '*relevant objectives*'. These arrangements are to be in a document referred to as the Network Code. The licensee is similarly required to prepare a document setting out the modification procedures for the Network Code.

Although the ESPP modification rules had previously formed a separate document, they were incorporated into the Network Code with the implementation of Modification ESPP109 and are now subject to the same modification procedures.

The Modification Proposal

This modification proposal, raised by Powergen Retail Limited, seeks to harmonise the ESPP Modification Rules with others within the iGT community, with similar proposals being raised to other Network Codes. Key aspects of the proposal include deadlines for the circulation of documentation and the use of standard templates.

¹ Ofgem is the Office of the Gas and Electricity Markets Authority. The terms 'Ofgem' and the 'Authority' are used interchangeably in this letter

Respondents' Views

ESPP received three responses to its consultation on this proposal, all of which were in support of its implementation. All respondents felt that the proposal would improve efficiency, particularly of change control, by allowing modifications to be pursued to common timescales across the industry. One respondent felt that the proposal would reduce uncertainty, while another considered that the proposal was consistent with previously published principals of good governance².

ESPP's Views

ESPP states that it is supportive of approaches that ease the burden of industry governance on shippers, and considers such measures to be consistent with relevant objective c) of its Network Code, '*the securing of effective competition between relevant shippers and between relevant suppliers*'. However, ESPP also considers that the processes contained within the proposal will be less efficient than its existing processes, in detriment to relevant objective d) '*the efficient discharge of [ESPP's] obligations under [its] licence*'. ESPP also considers that the additional obligations being placed upon shippers within the process may reduce their own efficiency, but notes that high level of support for the proposal from shippers.

On balance, ESPP does not recommend its implementation.

Areas of undue prescription

ESPP considers that:

- the templates provided may be unnecessary as most iGTs already provide reports to an adequate standard;
- the inclusion of a date for dissemination of the Authority decision is infeasible as it is not bound to any timetable within the Network Code or rules, and;
- the requirement for a Draft Modification Report is in most cases superfluous and a second consultation period not welcomed in practice.

Areas of ambiguity

ESPP considers that the references to the legal text are ambiguous, as it is the responsibility of the Pipeline Operator to provide final legal text.

Extent of effective harmonisation

ESPP raises doubts about the extent to which this proposal will achieve harmonisation across the various Network Codes, given that the proposal provides windows without which to carry out a specific task rather than prescribing a specific date, for instance circulation of a proposal within 5 Business days rather than specifically on D + 5. ESPP considers that remaining degree of discretion over the completion of tasks will result in inevitably result in proposals being pursued out of sync. ESPP is also concerned that outwith the modification procedures, iGTs may require different implementation lead times.

² [Gas Retail Governance – Further Consultation; Ofgem 37/03, June 2003](#)

Ofgem's Views

Ofgem acknowledges that this modification proposal cannot in itself achieve harmonisation across the various Network Codes, but notes that equivalent proposals have been raised to several other Network Codes. Moreover, Ofgem considers that the implementation of this proposal will, in its own right, be beneficial to the governance of the ESPP Network Code by greater clarity and certainty of future change.

Areas of undue prescription

Ofgem has some sympathy with the points raised by ESPP, particular over the degree of prescription within the Modification Rules. However, Ofgem has in the past experienced widely differing quality of modification report. In this regard it should be noted that the more information is available to Ofgem within the report, the easier and more robust will be its decision.

Ofgem is aware that the ESPP Modification Rules already provide for the circulation of an Ofgem decision within 5 Business days of receipt. However, the proposed template for the Draft and Final Modification Reports suggests a predetermined date for such circulation. In this regard, Ofgem agrees with ESPP that the inclusion of a date for dissemination of the Authority decision is not feasible, as Ofgem's decisions on Modification Proposals cannot be time bound within the Network Code or rules³.

Ofgem would also share ESPP's concern at introducing a secondary consultation which added no value. As ESPP states, iGT modification proposals have rarely solicited a large response from shippers. However, Ofgem is aware that shippers may welcome the opportunity to review the Draft Modification Report, particularly if this is the first opportunity to comment on legal text etc. In the event that no comments are received on the Draft Modification Report by the end of the 15 business day period, it could simply be forwarded to Ofgem as the final version.

Areas of ambiguity

For the avoidance of doubt, regardless of whether a modification proposal has accompanying legal text, it will remain the responsibility of the Pipeline Operator to provide the final legal text which, if the modification proposal is accepted, will be inserted into the Network Code. However, Ofgem does consider that there may be benefits from allowing the proposer to put forward an initial suggestion for the legal text. This may reduce the burden upon the iGTs legal resources and moreover, provide a greater degree of clarity of what exactly is being proposed, better informing respondents and therefore improving the consultation process.

Extent of effective harmonisation

Ofgem notes the ESPP's concerns about the extent to which this proposal will achieve harmonisation across the various Network Codes. Whilst Ofgem agrees that the discretion allowed within the timescale windows may still result in staggered progression of modifications,

³ As part of its 2005-06 corporate plan Performance Indicators, Ofgem aims make 70% of Modification decisions within 5 weeks

they will be far more closely aligned than is currently the case. Moreover, even with the discretion available, modification proposals that are raised across the various Network Codes will all reach Ofgem within a few weeks of each other. This may create an opportunity for decisions to be taken at the same time, thus realigning the timetables. More importantly, given sufficient lead time for the progression of modification proposals and subsequent Ofgem decision, the suggested implementation date provided by the proposer could be common and thereby achieve the desired alignment of industry change.

Ofgem's decision

Having considered the issues raised by this modification proposal Ofgem has decided to direct ESPP to implement modification proposal 112, as it will contribute to the efficient and economic operation of the pipe-line system and to the fulfilment of the relevant code objectives, particularly the *securing of effective competition between relevant shippers and between relevant suppliers*.

If you have any further queries regarding this decision letter please feel free to contact Ofgem at: modifications@ofgem.gov.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson
Director, Modifications.