

# **BGE(Northern Ireland) Transportation Network Code**

## **MODIFICATION RULES**

Version 2.12-0

18<sup>th</sup> 7<sup>th</sup> November August 20065

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## 1. INTRODUCTION

- 1.1 The Transporter is required by Condition 2.4.4 of the Licence (such Licence as was assigned to the Transporter by Bord Gais Eireann in December 2002) and Condition 2A.7 of the Standard Conveyance Conditions to establish and implement procedures for the modification of the Code so as to, inter alia, better facilitate the achievement of the relevant objective.
- 1.2 The Transporter is required, by Condition 2.4.5 of the Licence to prepare a document setting out the procedures for the modification of the Code (the "**Modification Rules**"). Such document shall also contain rules for changing the Modification Rules and take account of the requirements of Condition 2A.7 of the Standard Conveyance Conditions.
- 1.3 Any modification to the Code shall be made in accordance with the Modification Rules and Condition 2.4.6(b) of the Licence.
- 1.4 The Modification Rules do not constitute part of the Code.
- 1.5 In the Modification Rules, words and expressions defined in the Code and not otherwise defined herein shall have the meaning given to them in the Code.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

“**Alternative Procedure**” shall have the meaning set out in Section 11.1;

“**Alternative Proposed Modification**” shall have the meaning set out in Section 8.2;

“**Application for Change**” shall have the meaning set out in Section 13.2;

“**Consultation Period**” shall have the meaning set out in Section 6;

“**Consultees**” shall have the meaning set out in Section 3.6;

“**Final Modification Report**” shall have the meaning set out in Section 9.1;

“**Initial Modification Report**” shall have the meaning set out in Section 4.1;

“**Modification Rules**” shall have the meaning set out in Section 1.2;

“**Preliminary Determination**” shall have the meaning set out in Section 5.1;

“**Proposed Modification**” shall have the meaning set out in Section 3.1.

“**Relevant Objective**” shall have the meaning given to it in Condition 2.4.1 of the Licence;

## 2.2 Interpretation

2.2.1 Unless the context otherwise requires, any reference in the Modification Rules to:

2.2.1.1 "**including**" shall mean including but not limited to;

2.2.1.2 "**business day**" shall be construed as a reference to a day (other than a Saturday, Sunday or Bank Holiday) on which banks are generally open for business in Belfast, Northern Ireland;

2.2.1.3 a person shall be construed as a reference to any person, firm, company, corporation, government or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;

2.2.1.4 time shall be construed by reference to whatever time may from time to time be in effect in Northern Ireland ; and

2.2.2 the singular shall include the plural and vice versa. Sections and Section headings in the Modification Rules are for ease of reference only and shall not affect its construction.

2.2.3 All references herein to Sections are to Sections of the Modification Rules.

## 3. PROPOSED MODIFICATION

3.1 The Authority, the Transporter or any Gas Supplier or Shipper may propose a modification to the Code (a "**Proposed Modification**").

3.2 A Proposed Modification shall be prepared and submitted by the Authority, a Gas Supplier or a Shipper, in which case it must be submitted to the Transporter, or prepared by the Transporter and shall include the following:

3.2.1 a description of the nature and purpose of the modification;

3.2.2 an indication of how the modification would better facilitate the relevant objective as compared to the existing provisions of the Code that relate to that modification;

3.2.3 a list of all the Sections and parts of the Code that would require amending or a comparison of any text proposed for the Code with the relevant text of the existing Code; and

3.2.4 the date proposed for the implementation of the modification and any end date.

3.3 If the Transporter prepares a Proposed Modification, the Transporter shall have regard to the impact that such modification might have on the operation of any other Designated Pipeline Operator's network code.

3.4 The Transporter shall give each Proposed Modification a unique reference number.

- 3.5 The Transporter may, from time to time, determine, in its reasonable judgement, the form that a Proposed Modification should take.
- 3.6 The Transporter shall;
- 3.6.1 forward any Proposed Modification to the PS Gas Suppliers, the Shippers and all other Designated Pipeline Operators;
  - 3.6.2 make any Proposed Modification available to anyone who requests it;
  - 3.6.3 make any Proposed Modification available to persons in an appropriate manner where it is necessary for establishing whether the proposal would better facilitate the achievement of the relevant objective;
- (collectively the “**Consultees**”), it being acknowledged that the obligation in Section 3.6.2 shall be met by publishing the Proposed Modification on the Transporters website.
- 3.7 The Transporter shall, within five (5) business days of receiving a Proposed Modification, or in the case of a Proposed Modification prepared by it as soon as possible after preparing the same, forward the Proposed Modification to the Consultees.
- 3.8 Any person who has submitted a Proposed Modification may at any time up to the submission of a Final Modification Report to the Authority, request the Transporter to withdraw its Proposed Modification from the modification process described in the Modification Rules. The Transporter shall withdraw the Proposed Modification unless, in its opinion the implementation of the Proposed Modification would better facilitate the achievement of the relevant objective in which case the Transporter shall become the proposer of the modification.

## 4. INITIAL MODIFICATION REPORT

- 4.1 The Transporter shall, after receiving or preparing a Proposed Modification, prepare an “**Initial Modification Report**” containing:
- 4.1.1 the Proposed Modification;
  - 4.1.2 where the Transporter has not made the proposal:
    - 4.1.2.1 and it believes that an alternative proposal would better achieve the relevant objective, that alternative;
    - 4.1.2.2 the Transporters opinion of the Proposed Modification and;
    - 4.1.2.3 any text which the Transporter may wish to propose as an alternative to that contained in the Proposed Modification;
  - 4.1.3 without prejudice to Sections 9.3.4 and 9.3.7, the Transporters estimate of an implementation date if the Modification Proposal were to be approved by the Authority pursuant to Section 10.

- 4.2 In preparing an Initial Modification Report, the Transporter shall have regard to the impact that such modification might have on the operation of any other Designated Pipeline Operator's network code.
- 4.3 The Transporter shall, subject to Section 5.1.2, issue an Initial Modification Report to the Consultees within twenty five (25) business days of receiving a Proposed Modification.

## 5. PRELIMINARY DETERMINATION

- 5.1 The Transporter or any Consultee may, before an Initial Modification Report is issued pursuant to Section 4.3, or if it is issued, before the expiry of the Consultation Period, seek the preliminary view of the Authority in relation to any matter arising in respect of any Proposed Modification in accordance with this Section 5, (a “**Preliminary Determination**”) including as to whether:
  - 5.1.1 the matter is sufficiently urgent to justify adopting a procedure which may result in the implementation of a Proposed Modification earlier than by following the procedure set out in the Modification Rules;
  - 5.1.2 the Proposed Modification should be considered in an Alternative Procedure in accordance with Section 11;
  - 5.1.3 any Alternative Procedure issued by the Transporter in accordance with Section 11~~7~~ should be adopted;
  - 5.1.4 the Proposed Modification should be rejected without further consultation;
  - 5.1.5 a meeting of Consultees should be held in accordance with Section 7; and
  - 5.1.6 it is appropriate for the Transporter to prepare a report relating to the modification of the Code jointly with the other Designated Pipeline Operators.
- 5.2 The Transporter shall notify the Consultees and any Consultee shall notify the Transporter that it has sought a Preliminary Determination, setting out the matter on which the Authority's view is being sought and its reasons for seeking such Preliminary Determination.
- 5.3 Any Preliminary Determination given by the Authority in relation to any Proposed Modification shall bind the Transporter and each Consultee.

## 6. CONSULTATION PERIOD

Each Consultee shall have twenty (20) business days within which it may respond to an Initial Modification Report (the “**Consultation Period**”).

## 7. CONSULTATION MEETINGS

The Transporter may request a meeting of Consultees to discuss a Proposed Modification. Any Consultee may request the Transporter to facilitate a meeting of Consultees to discuss a Proposed Modification where it reasonably considers that such a meeting is necessary. If the Transporter does not consider such a meeting to be necessary such Consultee may request a Preliminary Determination in relation to whether a meeting shall be held in accordance with Section 5.1.5.

## 8. DEVELOPMENT PROCESS

- 8.1 Where, following the Consultation Period, amendments should, in the opinion of the Transporter, be made to the Proposed Modification which will not change the aim stated in the Proposed Modification, such changes may be incorporated into the proposed wording contained in the Final Modification Report. The Transporter or any Consultee may propose any such amendments.
- 8.2 Where, following the Consultation Period, amendments should, in the opinion of the Transporter, be made to the Proposed Modification which will change the aim stated in the Proposed Modification, an alternative Proposed Modification shall be issued by the Transporter for consultation containing such amendments (an “**Alternative Proposed Modification**”). The Alternative Proposed Modification shall be issued to the Consultees within ten (10) business days of the end of the Consultation Period for the first Proposed Modification. The Consultees shall have ten (10) business days to respond to the Alternative Proposed Modification.
- 8.3 If the Transporter prepares an Alternative Proposed Modification, the Transporter shall have regard to the impact that such modification might have on the operation of any other Designated Pipeline Operator’s network code.

## 9. FINAL MODIFICATION REPORT

- 9.1 Subject to Section 8.2, the Transporter shall compile and submit a final modification report (“**Final Modification Report**”) to the Authority within twenty (20) business days after the end of the Consultation Period.
- 9.2 If an Alternative Proposed Modification is prepared in accordance with Section 8.2, the Transporter shall compile and submit a Final Modification Report to the Authority in respect of the original Proposed Modification and the Alternative Proposed Modification, within fifteen (15) business days after the end of the Consultation Period for the Alternative Proposed Modification.
- 9.3 The Final Modification Report or (in the case of an Alternative Proposed Modification) both Final Modification Reports shall contain:
  - 9.3.1 any proposed text amending the Code;

- 9.3.2 an indication of how the modification would better facilitate the relevant objective as compared with the existing provisions of the Code that relate to that modification;
  - 9.3.3 the particulars of any representations or objections made (and not withdrawn) by any Consultee and an explanation of how those representations or objections have been addressed;
  - 9.3.4 the Transporter's recommendation as to whether the Proposed Modification or Alternative Proposed Modification (as appropriate) should or should not be made;
  - 9.3.5 the factors which, in the Transporter's opinion, justify making or not making a Proposed Modification or Alternative Proposed Modification (as appropriate);
  - 9.3.6 details of any amendment made in accordance with Section 8.1 together with an explanation of why, in the opinion of the Transporter, the amendment should be made; and
  - 9.3.7 the date proposed for the implementation of the Proposed Modification or Alternative Proposed Modification (as appropriate) and any end date, having regard to any system or procedural changes that may be necessary as a result of the modification. If such proposed date is different to the date estimated by the Transporter pursuant to Section 4.1.3, the Transporter shall ensure that before completing the Final Modification Report, Consultees shall have been given a further opportunity to comment on the Transporter's latest proposed implementation date and shall include in the Final Modification Report any views on implementation dates expressed by Consultees that differ to that proposed by the Transporter.
- 9.4 In preparing a Final Modification Report, the Transporter shall have regard to the impact that such modification might have on the operation of any other Designated Pipeline Operator's network code.

## **10. DETERMINATION AND IMPLEMENTATION OF MODIFICATION**

- 10.1 The Authority shall, after having received any Final Modification Report in relation to:
- 10.1.1 a Proposed Modification, determine whether such modification will better facilitate the achievement of the relevant objective as compared to the existing provisions of the Code that relate to that modification; or
  - 10.1.2 a Proposed Modification and an Alternative Proposed Modification, determine whether either of, or which of, such proposals will better facilitate the achievement of the relevant objective as compared to the relevant existing provisions of the Code that relate to that modification and inform the Transporter of its determination.
- 10.2 If the Authority's determination is that a Proposed Modification or an Alternative Proposed Modification (as appropriate) will so facilitate the

relevant objective, the Authority shall direct the Transporter to implement such modification on the date proposed for its implementation in the Final Modification Report or such other date as the Authority determines.

- 10.3 The Transporter shall comply with any direction given by the Authority to make a modification to the Code in accordance with a Final Modification Report.
- 10.4 The Transporter shall promptly:
  - 10.4.1 notify the Consultees of any determination of the Authority in relation to the implementation of a Proposed Modification or Alternative Proposed Modification (as appropriate); and
  - 10.4.2 provide a copy of any such modification to the Code to the Authority and the Consultees.

## **11. ALTERNATIVE PROCEDURE FOR SUBSTANTIAL REVIEW OF PART OF THE CODE**

- 11.1 The Transporter may, if it considers that any Proposed Modification would make such a significant change to the Code that the procedure given to it in Sections 3, 4 and 6 is not adequate to allow the Proposed Modification to be properly considered, request a Preliminary Determination as to whether an alternative procedure should be adopted in relation to such Proposed Modification (an “**Alternative Procedure**”) as is referred to in Section 5.1.2.
- 11.2 If the Authority’s Preliminary Determination is that an Alternative Procedure should be adopted, the Transporter shall prepare a document setting out:
  - 11.2.1 the Transporter's reason for adopting an Alternative Procedure;
  - 11.2.2 an outline of the proposed Alternative Procedure including a proposed timetable, but which shall provide each Consultee with not less than the Consultation Period in which to comment;
  - 11.2.3 any proposed amendment or addition to the Proposed Modification;
  - 11.2.4 details of any analysis it proposes to enable the Proposed Modification to be properly considered; and
  - 11.2.5 details of any proposed working group or review group to consider the Proposed Modification.
- 11.3 Any such Alternative Procedure shall be forwarded to the Consultees along with the Proposed Modification.
- 11.4 A Consultee may, within fifteen (15) business days of the date that the Alternative Procedure was issued, submit to the Transporter any comments it may have on the Alternative Procedure including its availability to attend any meeting proposed in the procedure.

- 11.5** The Transporter shall, within twenty five (25) business days from the date that the Alternative Procedure was issued, finalise and issue to the Consultees the Alternative Procedure which shall, subject to Section 11.6, be adopted and followed.
- 11.6** A Consultee may, within ten (10) business days of the date that the Alternative Procedure was issued, request a Preliminary Determination as to whether the Alternative Procedure proposed should be adopted in accordance with Section ~~5.1.35~~.
- 11.7** The Transporter may, at any time, amend the Alternative Procedure with the consent of the Authority or the unanimous agreement of the PS Gas Suppliers, the Shippers and all other Designated Pipeline Operators.

## **12. REVISION OF TIMESCALES**

- 12.1** The Transporter or any Consultee may, at any time, request the Authority to approve the increase or reduction of any of the time scales outlined in these Rules.
- 12.2** The Transporter and each Consultee shall, notwithstanding any other provision of these Rules, be bound by the Authority's determination of whether such an increase or reduction of time scales shall be made. The Transporter shall inform the Consultees of such determination by the Authority.

## **13. MODIFICATIONS TO THE MODIFICATION RULES**

- 13.1** Any modification to the Modification Rules shall be made in accordance with the provisions of this Section 13.
- 13.2** The Transporter, the Gas Suppliers and the Shippers may propose an amendment to the Modification Rules by preparing an **“Application for Change”** which shall include;
- 13.2.1** the proposed change, including the proposed text;
  - 13.2.2** a description of the objective of the proposed change; and
  - 13.2.3** its proposed date of implementation;
- and in the case of the Gas Suppliers and the Shippers, by sending the Application for Change to the Transporter.
- 13.3** The Transporter shall forward any Application for Change to the PS Gas Suppliers, the Shippers and the other Designated Pipeline Operators inviting their comments on it. Any such comments shall be made within fifteen (15) business days of the date upon which the Application for Change was forwarded or any such shorter period as the Transporter may have requested the Authority to approve and the Authority shall have so approved.

- 13.4** The Transporter shall prepare a report to be issued to the Authority which shall include:
- 13.4.1** the Application for Change;
  - 13.4.2** any such comments on it as the PS Gas Suppliers, the Shippers and the other Designated Pipeline Operators shall have made;
  - 13.4.3** the Transporter's views on such comments and where it was submitted by a PS Gas Supplier, a Shipper or another Designated Pipeline Operator the Application for Change; and
  - 13.4.4** any proposed text amending the Modification Rules to incorporate the change.
- 13.5** If the Authority approves the change to the Modification Rules proposed in such report, the Transporter shall provide the PS Gas Suppliers, the Shippers and the other Designated Pipeline Operators with five (5) business days' notice of the implementation of such change.

## **14. NOTICES**

- 14.1** Any notice or other communication given or made by any person under the Modification Rules shall be:
- 14.1.1** in writing and may be delivered by electronic mail, by hand to the addressee, by first class prepaid letter to the address of the addressee, or by fax to the addressee's fax transmission number specified in writing by the addressee or such other email address, address or number as may be notified by a person from time to time in writing or by email for this purpose; and
  - 14.1.2** deemed to have been given or made and delivered, if by hand, when left at the relevant address, if by letter, on the second day after posting, and if by fax transmission or electronic mail between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next business day after transmission; and
  - 14.1.3** marked clearly and conspicuously for the attention of the relevant addressee.
- 14.2** If a communication by fax is received in an incomplete or illegible form:
- 14.2.1** if the addressee so requests (by telephone or otherwise), the sender shall promptly retransmit the communication to the addressee; and
  - 14.2.2.** provided that the request for re-transmission was made within twenty four (24) hours after time of receipt (in accordance with Section ~~14.3~~1.1) of the first fax, the communication shall not be deemed to have been received until the time (whether or not

between 09:00 and 17:00 hours) of receipt by the sender of confirmation of such retransmission.

- 14.3** No accidental omission or neglect in sending any notice or other communication to, or non-receipt of any or notice or other communication by, any person shall be capable of invalidating any act or thing done pursuant to the Modification Rules.
- 14.4** Notwithstanding any other term of these Rules any requirement which the Transporter has to issue, forward or otherwise provide any notice, report, document or other communication to the persons referred to in section 3.6-2 or 3.7 shall be satisfied by the Transporter publishing the communication on its website.

## **15. REPORTS PREPARED JOINTLY WITH OTHER DESIGNATED PIPELINE OPERATORS**

- 15.1** Without prejudice to section 5.1.6 the Transporter shall prepare a report relating to the modification of the Code jointly with the other Designated Pipeline Operators where appropriate.