

Initial Modification Report No.6

Brexit Modifications

14th March 2019

Please find below Initial Modification Report No.6 to the NI Network Gas Transmission Code raised by the Transporter as required under Sections 2 and 3 of the Code Modification Rules.

In order to best manage the current uncertainty surrounding Brexit, please note that in accordance with section 4.1 of the Code Modification Rules, the Transporter has formally requested, and the Utility Regulator has approved, a consultation period of 5 Business Days, which is shorter than normal. The proposed implementation date has been set to align with the relevant legislative process.

A Description of the nature and purpose of the modification

In the event of a 'no-deal' Brexit, EU Regulations will no longer be directly applicable in the UK immediately after exit day. As set out in the European Union (Withdrawal) Act 2018, the UK Government plans to incorporate EU law, as it exists on exit day, into UK law. However, obligations to report to, or participate in, EU bodies and institutions such as ACER will be omitted. The UK Government has published draft Statutory Instruments (or SIs) which, once implemented, will give this process legal effect.

This means that there is no dilution of the requirement to comply with the existing regulations, but where relevant, references to certain legislation and references to EU institutions will no longer be correct. As a result, certain minor changes are required to the NI Network Gas Transmission Code. These are mainly changes to amend or remove references to the EU, EU bodies and institutions, and to deal with some other consequential changes within the text of the NI Network Gas Transmission Network Code.

Some minor process changes are required as a result of Brexit such as publishing the Auction Calendar, however they will not have a material effect on Shippers. The Proposed Modification is essentially a 'housekeeping' modification.

B How the modification better facilitates the relevant objective

The Relevant Objective, (condition 2.4 of the Transporter Licences) will be better facilitated by the NI Network Gas Transmission Code as a result of this modification. This change will support the efficient operation of the network by ensuring that certain referencing and defined terms in the NI Network Gas Transmission Code are updated to reflect the legislative situation, in the event of a 'no-deal' Brexit.

C The clauses of the NI Network Gas Transmission Code that require amendment

This proposal amends various sections of the NI Network Gas Transmission Code and adds, removes or amends certain defined terms, as shown in the details in section G.

D Impact on the networks of the Designated Pipeline Operators, Adjacent Transporters and/or relevant agreements in respect of the NI Network:

The Transporter has considered the impacts the modification may have and has concluded as follows:

Operation of the networks of the Designated Pipeline Operators: No impact

Adjacent Transporters: No impact

Relevant NI Agreements: No impact

E The date proposed for implementation

The Transporter proposes that this Modification should take effect from the date at which the relevant Statutory Instruments take effect in UK law. The relevant Statutory Instruments are:

- the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019; and
- the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.

F How to Respond

Please send responses no later than 22nd March 2019 to:

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G Explanation of Proposed Changes

Changes to the Legislative Framework

To date, the NI Network Gas Transmission Code and wider industry arrangements have been prepared to comply with relevant European Commission Regulations, in the form of Network Codes, specifically:

- Capacity Allocation Mechanisms: (EU) 2017/459
- Balancing Code: (EU) No 312/2014
- Interoperability Code: (EU) 2015/703
- Tariffs Code: (EU) 2017/460
- Security of Supply Regulation: (EU) 2017/1938

The UK Government has prepared a draft Statutory Instrument (“the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019”), which it intends to pass in the event of ‘no-deal’. This will have the effect of bringing the provisions of these network codes directly into UK law, whilst removing references to report to or comply with the requirements of EU bodies and institutions such as ACER.

Similarly, the UK Government has prepared a draft Statutory Instrument (“the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019”) to amend existing primary and subordinate legislation which is already derived from EU law, in particular where it enacts the requirements of the Third Energy Package (the Directive 2009/73/EC and the Regulation EC No. 715/2009). This SI will update the relevant legislation for the change in status of the UK with respect to the EU. Primarily the SI will substitute references to the EU with references to GB and/or Northern Ireland whilst removing provisions which currently give the EU institutions a role. The relevant NI legislation (for gas) is listed below:

- The Gas (Northern Ireland) Order 1996
- The Energy (Northern Ireland) Order 2003

In preparing the NI Network Gas Transmission Code to date, the general approach has been not to include references to the legislative framework except where absolutely necessary. Consequently, there are only a few minor changes required to address the change in the legislative framework in the event of a no-deal Brexit. These are set out and explained in the summary table which follows. It should be noted that if Brexit proceeds with a deal in place then these changes would likely be needed at some point either during or at the end of the transition period, as it is anticipated that essentially the same Statutory Instruments will be required at the actual point of exit.

The amendment of legislation will have more significant implications for the provisions of Licences in Northern Ireland. The Transporter understands that the Utility Regulator plans to consult on these separately as/when required. It should be noted that the Transporters have not identified any inter-dependence with the provisions of the Licence, amended for Brexit or otherwise, in the text of the NI Network Gas Transmission Code.

Summary of Proposed Changes

| Section | Outline of Change | Explanation |
|-----------------------|---|--|
| 2.4.2(b) | Amend the definition of Auction Calendar to remove reference to publication by ENTSOG | It is anticipated that Shippers should be able to continue to use the PRISMA platform. However, the obligation on ENTSOG to publish the Auction Calendar will no longer apply in respect of the GB and Northern Ireland jurisdictions. It is anticipated that the schedule of dates will remain entirely in line with those published by ENTSOG, but the obligation to publish the calendar under the SI falls to the GB and NI Transporters instead of ENTSOG |
| 2.8.14 | Remove references to UTC | No changes to the use of UTC (Universal Co-ordinated Time) are anticipated at present, but the SI removes references to UTC and just refers to the relevant times. This change is for consistency with the legislation |
| 4.2.11 | Re-phrase to reflect the wording of the requirement in the relevant SI | The current wording of the relevant obligation in the CAM Code requires the Transporter to consider the EU Ten Year Development Plan. The relevant SI amends this obligation to refer to the Transporter considering the obligation on an Adjacent Transporter to take the EUTYDP into account. In the context of the Republic of Ireland, the EUTYDP will still be relevant to Gas Networks Ireland. Hence the change rewords the obligation in the NI Network Gas Transmission Code to incorporate both the general intent of the SI and to acknowledge the specific consideration of the EUTYDP by the Adjacent Transporter |
| 16.2.7 | Remove reference to ENTSOG and to ACER | In line with the SIs, this change simply removes the obligation on Shippers to comply with information requests from ACER or ENTSOG |
| “Competent Authority” | Remove reference to the European Union (including any Member State thereof) | In line with the SIs, this change removes the European Union as a Competent Authority in the context of the Northern Ireland Gas Transmission Network Code |
| “ENTSOG” | Removal of definition | ENTSOG will no longer be directly relevant to the NI Network Gas Transmission Code, specifically in its role in publication of the Auction Calendar. See also section 2.4.2(b) |
| “EUTYDP” | Amendment of term to give European Union in full, rather than as an abbreviation | Since the EUTYDP term is still required (as it remains relevant to Gas Networks Ireland as Adjacent Transporter in the ROI), this change is simply to give the definition in full |
| “FDA UIOLI” | Amendment of term to refer to the relevant legislative instrument | This reference to the Third Package Regulation is updated to also refer to the SI which will bring it into direct effect within UK law |
| “Licence” | Amendment of term to reflect the fact that the relevant legislation will be updated | The term already refers to the Gas (Northern Ireland) Order 1996 (as amended). This change simply adds ‘from time to time’ |

| | | |
|-----------------------|--|---|
| "Recognised Standard" | Amendment of term to remove references to EU standards, and to include reference to standards in the Republic of Ireland | In line with the SI, general EU standards will no longer be relevant to the NI Network, but in the case of the South North Interconnection Point, which is physically located in the Republic of Ireland, relevant standards in ROI will remain relevant. The proposed change reflects this |
| "Retained EU Law" | New term, referring to the relevant statutory instrument | This new term is required to support the amended definition of FDA UIOLI |

H: Proposed Legal Text

Amend Section 2.4.2 (b) to read as shown below:

2.4.2 For the purposes of this Code:

- (a) **“Auction”** means an auction of IP Capacity of a single Class, IP Capacity Duration, IP Capacity Period and Flow Direction and which is either Bundled or Unbundled and **“Auctions”** shall be construed accordingly save that references to **“Auctions”** in sections 2.8.43 to 2.8.49 have the meaning given to them in section 2.8.42;
- (b) **“Auction Calendar”** in relation to an Auction Year is the auction calendar published ~~by~~ **ENTSOG** for that Auction Year on the Transporter’s Website;

.....
Amend section 2.8.14 to read as follows:

2.8.14 The Bid Windows shall be determined as follows:

- (a) no Bid Window shall start before 08:00(~~UTC~~) or end after 17:00 (~~UTC~~);

.....
Amend section 4.2.11 to read as follows:

4.2.11 The Market Demand Assessment Report shall take into account:

- (a) whether ~~the EUTYDP or~~ the Ten Year Statement, any UK network development plan or national development plan relevant to the network of an Adjacent Transporter including the EUTYDP indicate a demand requirement in a reasonable peak demand scenario which the offer of Incremental Capacity could fulfil;

.....
Amend section 16.2.7 to read as follows:

16.2.7 Shippers agree to respond within a reasonable timeframe to any additional requests for forecast (or other) information made by the Transporter at any time where necessary for the purposes of compliance with information requests from ~~ENTSOG, ACER,~~ the Authority and/or any other reasonable purpose.

Appendix 1: Definitions and Interpretation

Amend, add or remove, as applicable, the following defined terms to read as shown below:

| | |
|-------------------------------------|--|
| “Competent Authority” | means the Authority, the Office of Gas and Electricity Markets in Great Britain, or any local, national or supra-national agency, authority, department, inspectorate, official, court, tribunal or public or statutory person (whether autonomous or not) of the European Union (including any Member State thereof) which has jurisdiction over the Individual Transporters or a Shipper regarding the subject matter of this Code; |
| “ENTSOG” | means the European Network of Transmission System Operators for Gas, an ‘Association Internationale Sans But Lucratif’ established under Belgian law; |
| “EUTYDP” | means the EU-wide ten-year network development plan <u>of the European Union</u> ; |
| “FDA UIOLI” | means the firm day-ahead use-it-or-lose-it mechanism set out in point 2.2.3 of Annex 1 to Regulation (EC) No. 715 / 2009, as amended by a commission decision of 24 August 2012 <u>and (as a component of Retained EU Law) as amended by Schedule 2 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019</u> ; |
| “Licence” | means the licence (as amended from time to time) to convey gas granted to an Individual Transporter under Article 8 (1) (a) of the Gas (Northern Ireland) Order 1996 (as amended <u>from time to time</u>); |
| “Recognised Standard” | means any technical, engineering or other standard, issued or published by any governmental body of professional or other institution, and generally recognised as applying to the gas industry in the United Kingdom <u>or, as relevant to the South North Interconnection Point, the Republic of Ireland</u> or the European Union , as from time to time applicable; |
| “Retained EU Law” | has the meaning given to it in section 6(7) of the European Union (Withdrawal) Act 2018; |