



Roy Colville  
The Utility Regulator  
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*SENT BY E-MAIL*

28 April 2017

**Re: Gas transmission licence modifications to implement single system operation**

Dear Roy,

Thank you for the opportunity to respond to the Utility Regulator ("UR") consultation on the proposed licence modifications for gas transmission system operators to reflect the new single system operation arrangements for the NI gas transmission market. As a key participant TSO in the single system operation project since 2013, you will be aware that GNI (UK) Limited ("GNI (UK)") has been working closely with UR and the other NI TSOs to deliver the necessary components of the single system operation and welcome the publication by UR of its intended modifications to the TSO licences to reflect the new arrangements.

We note you have provided us with a draft of the modifications in advance of publication and are grateful that some amendments to the drafting have been reflected. However other changes of key concern haven't been reflected in the draft for consultation. We provide a table below with some specific comments on each section of the licence modification drafting but have firstly summarised the seven key issues below. These key issues reflect critical concerns held by GNI (UK) in relation to the proposed licence modifications.

GNI (UK)'s position is that these issues need to be resolved to ensure that the new licence modifications are appropriate, workable and acceptable by all parties. GNI (UK) are committed to continued engagement on this matter with a view to agreeing an appropriate final set of licence modifications that will underpin the single system operations model.

GNI (UK) would welcome further discussion on the matters raised below and are available to meet UR once you have had an opportunity to review our response.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Brian Mullins', is written over a horizontal line.

Brian Mullins

Regulatory Framework Manager

On behalf of GNI (UK) Limited

## **Key Issue 1: Unilateral amendments to single system operations**

While GNI (UK) recognises that it may be necessary to amend the SSO arrangements from time to time, it is not appropriate that a change to the arrangements may be imposed by UR by means of a direction under the proposed provisions of section 2.17.3 (g) (i). As is the case in the current consultation, GNI (UK) considers that any fundamental change to the market or the scope of the single system operation arrangements should be fully consulted upon and agreed with industry and the TSOs and subsequently reflected into the conveyance licences where appropriate. We are concerned that section 2.17.3 (g) (i) would allow for a unilateral direction without such a process and without the safeguards and review exercise associated with the licence modification process. As such section 2.17.3 (g) (i) is not acceptable to GNI (UK) and must be deleted. For the avoidance of doubt, GNI (UK) recognises the need to allow for the further development of the market arrangements. However, we consider that sufficient flexibility is provided by the mechanism at 2.17.3(g) (ii) which provides for a change in scope with the consent of the TSOs and the approval of UR. Where the TSOs do not agree to such a change in scope, it remains open to UR to modify the TSO licences.

Similarly, section 2.17.5 (b) (vi) would allow UR to mandate a change to the system operator agreement (which is a commercial agreement agreed at arm's length between the licensees). This is not acceptable to GNI (UK) and we would request that this provision be deleted or amended to remove the words 'direction issued or'.

Finally 2.17.7 should be deleted also<sup>1</sup>. The licence, as drafted, contains an obligation on the TSOs to take all reasonable steps to prepare a SSO Agreement which meets the requirements of condition 2.17. Failure to do so would place the TSOs in breach of licence and amenable to an enforcement action by UR. While this is accepted by GNI (UK), it is not appropriate that UR may direct changes to the SSO Agreement that are in its opinion necessary or expedient to meet the requirements of Condition 2.17. We consider that it would go beyond the scope of UR's statutory powers to direct the content of a commercial agreement between licensees.

## **Key Issue 2: Timings of CJV/SOA Contract Approvals**

Clauses 2.4.1 and 2.17.12 of the proposed modification reference the 1<sup>st</sup> October 2017 as an implementation date of the new single system operator arrangements. The TSOs fully accept that this is the intended go live date for the new market arrangements, and are fully committed to the achievement of this date. However, this is a complex project and there are a number of dependencies external to the TSOs. In particular, the TSOs are committed to market testing of new systems and processes with shippers, and wish to ensure that the industry is prepared for an orderly 'go-live'. GNI (UK) is concerned that, in light of the lead times to modify its licence, in the event of any slippage in the go-live date, the inclusion of fixed dates in the licence drafting creates a risk of non-compliance with its licence. As such we request that all such fixed dates be deleted and replaced with a general reference such as either the 'commercial operation date', 'SSO go-live' or 'SSO cut-over' date. It is not fair nor appropriate that GNI (UK) (or any TSO) be subject to a licence condition that it is not within its exclusive control to comply with.

We note that under Section 2.17.3, the licence modification prescribes that the TSO would enter into relevant SSO agreements no later than 2 months prior to operation or as directed by the Authority, but later in 2.17.4 it outlines that the TSOs would submit a draft to the Authority for its approval no later than 2 months prior to operation (which would then require further time for UR to approve/consider). These timeframes are inconsistent and should be aligned.

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<sup>1</sup> Together with consequential deletions of 2.17.9(a)(i) and deletion of 'direction issued' in 2.17.9 (a) (ii)

UR will be aware that in relation to the proposed 1<sup>st</sup> October 2017 go-live the TSOs are on a critical path to ensure all relevant parts of the single system operation are delivered. We therefore need to ensure the full timelines are assessed in terms of:

- (i) The TSOs completing the negotiation of draft contracts,
- (ii) The TSOs submitting a draft to UR for review
- (iii) UR reviewing the drafting and either approving the draft or providing comments
- (iv) Discuss with UR any comments raised, redraft where appropriate, and seek relevant approvals
- (v) Approval of contracts by UR and internal TSO governance procedures and execution of contracts

With all this in mind, we do not believe it prudent to hardwire in the licence that the TSOs would be in a position to have entered into contracts by 2 months before go live. We would propose the timelines for this is amended to 1 month before go-live, subject to pre-agreed go-live criteria being met on the new operating model.

### **Key Issue 3: Objectives of the Single System Operator**

Section 2.17.1 requires that single system operation facilitate the achievement of certain objectives, including cost efficiencies (2.17.1(a)), the maintenance of a Single Network Code (2.17.1(b)), the provision of a single point of contact for suppliers (2.17.1(c)) and accurate and transparent allocation of costs (2.17.1(d)). We consider that these objectives are too narrowly focussed and are not in the best long term interests of suppliers or customers. For example, although the single system operator is required to identify and implement cost efficiencies, it is not obliged to secure the efficient operation of the market, which we would consider to be its primary function. We consider that the objectives 2.17.1(a) and (d) are more properly the objectives of UR in regulating the TSOs.

We note that the equivalent provision in the SEM Market Operator licence requires:

- (i) *the efficient discharge by the Licensee of the obligations imposed upon it by the Licence and by the Republic of Ireland Market Operator Licensee of the obligations imposed upon it by the Republic of Ireland Market Operator Licence; and*
- (ii) *the development and administration of the SMO & NEMO Business in an efficient and coordinated manner.<sup>2</sup>*

### **Key Issue 4: Single System Operations**

We note the use and reference to "single system operations" and "single system operation arrangements" throughout the initial introduction to the paper and the proposed licence modifications, but feel it is necessary to fully clarify what this entails. As clarified in Section 2.17.3 (d) of the draft licence modifications, single system operation does not include control room services and physical operation of the network. This is consistent with GNI (UK)'s understanding of the proposed target operating model, under which certain "market operations" related functions will be delivered going forward by the CJV team (e.g. administration of a single code and IT system, general shipper query management, shipper billing), but other operational activities will continue to be delivered by the relevant TSO (e.g. grid control, physical operations, on-site activities such as maintenance). There are a number of drafting changes required to clarify this in the licence modification. In particular, we would propose that "Single System Operation" is clearly defined in the licence modifications to ensure clarity for all parties on what it exactly entails and that any references to the Licensees' services and systems involved in the SSO arrangements should be noted as "certain" services and systems.

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<sup>2</sup> Condition 14(2) (c)

#### **Key Issue 5: Control Room Arrangements**

We welcome the clarification provided by UR that a single control room requirement will not form part of the existing licence modifications. The introductory paper however outlines that a single control room requirement is “still on the agenda” due to existing contractual commitments of the TSOs. GNI (UK) would reiterate its position previously provided to UR that a single control room concept requires extensive discussion and analysis to make an informed decision on whether it is appropriate.

This analysis would need to include:

- (i) A comprehensive cost-benefit analysis of a move to a single control room provider
- (ii) Impact on price control determinations already provided to each TSO
- (ii) A review of the clear procurement challenges that would arise for a single control room tender process, particularly where one or more of the TSOs may itself choose to participate in the tender

As a point of drafting, we note that Section 2.17.3 (d) specifically outlines that the single system operation arrangements do not include Control Room Services and physical pipeline operation. We consider however that this exclusion should be made in the definition of system services at the outset of the section. We consider that this better clarifies the current position. As highlighted at Key Issue 1 above, we would expect that the inclusion of control room services in the mandate of the single system operator should require a licence modification.

#### **Key Issue 6: Acting in conjunction with each other provisions**

We note the inclusion of Section 2.17.16 requiring the Licensee to act “in conjunction with every other HP conveyance Licensee” and an obligation to use all reasonable endeavours to work together and provide such assistance as may be reasonably required, and if required amend the SSO agreement in situations where the Licensee is not reasonably capable of fulfilling the relevant obligation without the assistance of any or every other Licensee.

The consultation paper outlines that “it is not anticipated that this will require any further costs above allowances provided for the CJV”. GNI (UK) would not necessarily agree with this position – if a given licensee requires assistance/co-operation of other licensees and that is not forthcoming, there will generally be costs arising either in (i) seeking to resolve the dispute (ii) the licensee putting in alternative arrangements which would incur additional costs and/or (iii) it will be necessary to amend the SSO agreements (which will infer legal and other costs as outlined in Section 2.4.7 of the consultation paper). It may also infer that single system operations can be achieved without all the TSOs participating – this is a fundamental issue and GNI (UK) believes that all TSOs must be committed to and participate in all aspects of the SSO arrangements. If any Licensee fails to fulfil its contractual and licence obligations, it will result in either a licence breach and/or a formal dispute arising between the TSOs which will have to be resolved and there is no guarantee that an amendment to the SSO agreement will either (i) be accepted by all Licensees or (ii) resolve the issue at hand.

#### **Key Item 7: Transitional Arrangements**

We request that UR include a condition dealing with transition arrangements and Go-Live. For example, it is not clear to us whether it is intended that the new condition 2.4 would apply *in substitution of* or in addition to existing condition 2.4 in the period between implementation of the licence modification and the Go-Live Date. GNI (UK) will need the facility to amend its existing Code to facilitate run off modifications prior to the implementation of the new market arrangements.



## Specific GNI (UK) Comments on Drafting

The table below provides specific feedback from GNI (UK) on each section of the draft licence modifications as appropriate.

Section	Comments
2.17.1	<p>As single system operation activities only relate to a subset (non-physical) activities related to TSO operations, we would suggest that the opening sentence reference to "through the common provision by all HP Conveyance Licensees of their services and systems" should be restated as "through the common provision by all HP Conveyance Licensees of certain services and systems".</p> <p>This would clarify the fact that only certain services come under the single system operation model. In addition the text in parenthesis in 2.17.3 (d) (i) should be inserted after "services and systems". For clarity the defined term "single system operation" should be highlighted in bold. Given the significance of the term, we also consider this should be capitalised.</p>
2.17.1 (a) – (d)	<p>See Key Issue 3 above.</p> <p>2.17.1 (a) &amp; 2.17.1(d) should be deleted. Identification of cost efficiencies in aggregate under the new operating model is something under the control and direction of UR rather than the TSOs and negotiated as part of the price controls. In practice the TSOs will be submitting OPEX and CAPEX requests for the CJV operation as part of the periodic price control processes and during this exercise with UR, the identification and negotiation on any cost efficiencies would take place accordingly. This process will also provide for the monitoring of costs etc.</p> <p>2.17.1 (c) should be ranked as the priority objective and there should be an additional related objective for the new arrangements to deliver improved services for all stakeholders and in doing so, then help create conditions to allow the NI gas market to develop.</p>
2.17.2	The defined term "single system operation arrangements" should be capitalised.
2.17.3 (a)	<p>See Key Issue 2 above</p> <p>GNI (UK) does not believe it practical at this juncture that the TSOs would be required to enter into an SSO agreement no later than 2 months prior to go-live. Negotiations on contracts are continuing and any such contracts will require UR review and approval. We would request this is restated to one month before the "Go-Live Date".</p> <p>"Go-Live Date" should be a date stated in a notice published by UR not less than one month prior to that date, confirming the go live criteria are met.</p>
2.17.3 (b)(i)	Throughout the drafting, the terms 'HP System' and 'Network' are used interchangeably. 'HP System' should be defined and used exclusively where the intention is to refer to all the NI gas transmission systems in aggregate. The term 'Network' is a defined term in all TSO licences and has a different meaning in each (in each case referring to the Network of <i>that licensee</i> only).
2.17.3 (c)	The governing committee will provide oversight and governance to the GMO NI. 'Managerial' responsibility will rest with the General Manager of the CJV.
2.17.3 (d)	GNI (UK) is not clear why "Control Room Services" is capitalised when it is not defined. Suggest either defining the term or using lower case "control room services"
2.17.3 (g)(i)	See Key Issue 1 above. This provision should be deleted.

2.17.4	See comments on 2.17.3 (a) above
2.17.5 (a)	As there are a number of other legal agreements between the Licensees, for clarity, this clause should be amended as follows: 'set out all of the terms that govern the relationship between the licensee and every other HP Conveyance Licensee (each a Party) <u>in respect of the single system operation arrangements</u> to act in conjunction and co-operation with each other to establish, implement and comply with the single system operation arrangements;
2.17.5 (b)	See comments on 2.17.3 (g) above
2.17.5 (b) (ii) and (iv)	These provisions require that the SSO Agreement include an inappropriate level of detail, which would result in frequent amendments to the agreements which would create legal costs and require UR approval unnecessarily (e.g. financial resources committed by each party might change at each price control). These conditions should refer to the provision in the SSO Agreement of such procedures to address these items rather than the detail of same.
2.17.5 (b) (v) (B)	We do not believe that all disputes will result in the need for the SSO Agreement to be amended. Therefore, this clause should be shortened to 'amending the SSO Agreement'.
2.17.5 (b) (vi)	See Key Issue 1 above. The words "direction issued or" should be deleted.
2.17.7	See Key Issue 1 above. This clause should be deleted.
2.17.9 (a)	See Key Issue 1 above.  Part (i) should be deleted. The words "direction issued or" should be deleted in part (ii). In addition, part (iii) currently requires all reasonable steps to be taken to vary the SSO agreement when one party requests a change. Only changes agreed by all parties (or otherwise required by the agreement, e.g. on foot of a dispute or a voting mechanism) should be required to be made. The words "and agreed by all parties or otherwise in accordance with its terms" should be added. In the alternative, this part (iii) could be deleted as the agreement will provide for this in any case.
2.17.9 (c)	For clarity, this should be re-stated as follows: 'submit a copy of the report of the review conducted in accordance with sub-paragraph (b) to the Authority as soon as reasonably practicable <u>after that review</u> ; and'
2.17.9 (d)	For clarity, this should be re-stated as follows: ' <u>Agree to</u> vary the SSO Agreement <i>in accordance with its terms</i> as may be required in light of any outcome of the review'.
2.17.12	See Key Issue 2 above. The reference to 1 October 2017 should be replaced with "the Go-Live Date". We would reiterate in this regard that all parties are working towards 1 October 2017, and the IT project is currently being delivered according to plan. However, as with any project, issues may emerge that could affect the delivery of the project. There will also need to be a clear set of go-live criteria achieved across a number of items which would be required for the project to go-live on 01 October 2017. Our intention here is not to signal a delay, but to highlight that putting a prescriptive date of 1 October 2017 means that the TSOs could technically have breached their licence for items that may be beyond their control. Suggested addition 'provided that nothing in this provision shall require implementation prior to the Go-Live date'.

2.17.16	<p>See Key Issue 6 above.</p> <p>We note the inclusion of Section 2.17.16 requiring the Licensee to act “in conjunction with every other HP conveyance Licensee” and an obligation to use all reasonable endeavours to work together and provide such assistance as may be reasonably required, and if required amend the SSO agreement in situations where the Licensee is not reasonably capable of fulfilling the relevant obligation without the assistance of any or every other Licensee. The introductory paper outlines that “it is not anticipated that this will require any further costs above allowances provided for the CJV”. The reference in (a) to ‘all reasonable endeavours’ should be replaced with ‘reasonable endeavours’ here and throughout the drafting. In addition the requirement to amend the agreement in (c) should be qualified as a reasonable endeavours obligation. It is noted that in circumstances where another licensee is not providing assistance, it may not be possible for GNI (UK) to secure the amendment of the SSO Agreement. Equally where the costs of making such an amendment or of complying with the amended arrangements are not recoverable, it would not be reasonable to require GNI (UK) to do this.</p>
2.4.7 – 2.4.9	<p>These clauses relating to code modifications are already covered in the GNI (UK) licence, but in each case are stated to be “Subject to Standard Condition 2A”. Please clarify the rationale for not including this reference in the Single Network Code provisions and the intended significance of the change.</p>
New Condition	<p>See Key Issue 7 above.</p> <p>We request that UR include a condition dealing with transition arrangements and Go-Live. For example, it is not clear to us whether it is intended that the new condition 2.4 would apply <i>in substitution of</i> or in addition to existing condition 2.4 in the period between implementation of the licence modification and the Go-Live Date. GNI (UK) will need the facility to amend its existing Code to facilitate run off modifications prior to the implementation of the new market arrangements.</p>

