

Appendix 7

BGTL Gas Transmission Licence (extracts)

Condition 1.13: Payment of Fees to the Authority

1.13.1 In respect of each year, beginning on 1 April, during which the Licence is in force, the Licensee shall pay to the Authority a fee of the amount determined in accordance with this Condition (the **licence fee**).

1.13.2 The Licensee shall pay to the Authority the licence fee for each year (the **relevant year**) within 30 days of the Authority giving notice to the Licensee of the amount due from the Licensee for the relevant year.

1.13.3 For each relevant year, the licence fee shall be the total of:

- (a) an amount that is the Relevant Contribution to the Estimated Costs of the Authority for the relevant year;
- (b) an amount that is the Relevant Contribution to the Estimated Costs of the Consumer Council with regard to the exercise of its functions relating to gas consumers for the relevant year; and
- ~~(c) an amount that is the Relevant Contribution to the Estimated Costs of the Competition Commission, in connection with any reference made to it in respect of the Licence or any other licence granted under Article 8(1)(a) of the Order, for the year immediately preceding the relevant year (the **previous year**); and~~
- ~~(c)~~ an amount which is the difference (which may be a positive or negative amount), if any, between:
 - (i) the licence fee that would have been due from the Licensee for the year immediately preceding the relevant year (the **previous year**) had such fee been calculated in relation to the actual costs of:
 - (A) the Authority for the previous year; and

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(B) the Consumer Council with regard to the exercise of its functions relating to gas consumers for the previous year; and

~~(C) the Competition Commission, in connection with references of the type referred to in sub-paragraph 1.13.3(c), for the year immediately preceding the previous year; and~~

(ii) the licence fee paid by the Licensee for the previous year,

provided that where the Licence is in force for only a part of the relevant year, the amount payable in respect of that year shall be a proportionate part of the licence fee due for the full year.

1.13.4 Where:

- (a) the Estimated Costs of the Authority or of the Consumer Council are revised during the course of the relevant year (**Revised Costs**);
- (b) the Licensee has paid the licence fee for the relevant year; and
- (c) the Revised Costs would, had they applied to the calculation of the licence fee paid by the Licensee, have resulted in the calculation of a lower licence fee than that paid by the Licensee,

the Authority may, where it is reasonable for it to do so taking into consideration the timing of the Revised Costs and the provisions of paragraph 1.13.3(~~ec~~), refund to the Licensee the difference between the amount of the licence fee paid by the Licensee and the amount of the lower licence fee referred to in paragraph 1.13.4(c) above.

1.13.5 Where the Licensee fails to pay the amount of the licence fee as notified to it under paragraph 1.13.2 above within the 30 day period specified, it shall with effect from the end of that 30 day period pay simple interest on the amount at the rate which is from time to time equivalent to the base lending rate of an institution designated by the Authority for this purpose.

1.13.6 In this Condition:

“Estimated Costs”

- (i) in relation to the costs of the Authority, means the costs estimated by the Authority as likely to be its costs for the relevant year as calculated in accordance with the Principles; ~~and~~
- (ii) in relation to the costs of the Consumer Council, means either:
 - (A) the costs notified to the Authority by the Consumer Council as its estimated costs for the relevant year as approved by the Department; or
 - (B) in the event that the Authority does not receive such notification by 31 July in the relevant year, the costs estimated by the Authority (having regard to any estimate of such costs in any forward work programme published by the Consumer Council in respect of the relevant year) as likely to be the costs of the Consumer Council for the relevant year; ~~and~~
- ~~(iii) in relation to the costs of the Competition Commission, means the costs estimated by the Authority following consultation with the Competition Commission as likely to be the costs of the Competition Commission for the previous year in connection with references of the type referred to in sub-paragraph~~

~~1.13.3(e) above.~~

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“Principles”

means the principles determined by the Authority for the purposes of this Condition generally, following consultation with the Licensee and with others likely to be affected by the application of such principles and as notified to the Licensee in writing.

“Relevant Contribution”

means, in respect of the Estimated Costs, the level of contribution to those costs applicable, whether by way of a specified amount or a stated proportion, to the Licensee as determined under or in accordance with the Principles.

Part 3 – The Special Conditions

Condition 3.1 – Allowed Revenue Determination

3.1.8 Allowed Revenue after Final Repayment Date

3.1.8.1 Not less than 12 months prior to the date which the Licensee anticipates will be the Final Repayment Date the Licensee shall submit to the Authority:

- (i) a proposal as to the formula to be used for calculation of its allowed revenue recovery from conveyance charges (the "**Total Allowed Transmission Revenue**") in respect of Post Finance Gas Years (as defined in Condition 3.1.8.2) (the "**Proposed Formula**"); and
- (ii) a forecast of the amount of its Total Allowed Transmission Revenue in respect of the first five Post Finance Gas Years (the "**Forecast**");

3.1.8.2 The Licensee shall, in setting its charges for the conveyance of gas for each Gas Year which starts after the Final Repayment Date (such Gas Years being "**Post Finance Gas Years**" and the expression "**Finance Gas Years**" shall be construed accordingly) shall do so in accordance with such arrangements as are agreed by the Authority having regard to the principle that the Licensee shall be entitled to receive by way of conveyance charges:-

- (a) the costs incurred by the Licensee deemed necessary or appropriate by the Authority in administering, maintaining and operating the Network;
- (b) the costs incurred by the Licensee deemed necessary or appropriate by the Authority to expand, reinforce and renew the Network;

- (c) during the Post Finance Gas Years which end prior to the date on which an expert appointed by the Licensee (the “**Expert**”) anticipates that the required decommissioning works as described below will be commenced, revenues which (when aggregated with any revenues recovered by it during Finance Gas Years in respect of the costs of decommissioning pursuant to the Authority Direction) are sufficient to fund the expected costs (as determined by the Expert) of carrying out such works of decommissioning of the Network as are required to be carried out pursuant to applicable law and the contractual obligations of the Licensee. The remit of the Expert shall be the assessment of the nature and extent of the decommissioning works which are required and the likely costs of those decommissioning works; and
- (d) the aggregate of the amounts calculated under (a), (b) and (c) above will be reduced by the amount of any free surplus cash (excluding, for the avoidance of doubt, any cash which is held in a fund or reserve for the purpose of financing future costs or decommissioning costs) available to the Licensee for payment of the costs referred to in (a), (b) and (c) above.

3.1.8.3 The Licensee shall promptly provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying that the Proposed Formula and the Forecast submitted to it by the Licensee comply with the principles set out in Condition 3.1.8.2.

3.1.8.4 The Authority may, following review of the Proposed Formula and the Forecast, by written notice (including, where approval has been given by the Authority pursuant to Condition 3.1.8.4(ii), details of the amendments made by the Authority and the reasons for them) to the Licensee:

- (i) approve the Proposed Formula and the Forecast. The Proposed Formula shall then be the basis for calculating Total Allowed Transmission Revenue; or

- (ii) approve the Proposed Formula and the Forecast with such amendments as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in Condition 3.1.8.2.

3.1.8.5 In the event that the Authority gives its approval under Condition 3.1.8.4(ii) (in this Condition 3.1.8.5, the "Approval"):-

- (i) the Approval shall not have effect for 28 days commencing with the date of the notice of the Approval;
- (ii) the Licensee may within 28 days of the date of the notice of the Approval request the Authority by written notice to the Authority (a "**disapplication notice**"), not to apply the provisions of Condition 3.1.8.4(ii) in which event the Approval shall not apply;
- (iii) unless within ~~six three~~ months of the date of the disapplication notice the Authority ~~makes publishes~~ a ~~reference to the Competition Commission decision~~ under Article ~~1514(8)~~ of the Order ~~relating to modify~~ in whole or part ~~to a modification of~~ this Condition 3.1.8, then the Proposed Formula and the Forecast (in the form originally proposed by the Licensee under Condition 3.1.8.1) shall apply as if approved by the Authority pursuant to Condition 3.1.8.4(i);
- (iv) in the event of ~~such a reference to the Competition Commission Authority publishing a decision~~ under ~~Condition 3.1. Article 14(8.5(iii))~~, and if the ~~Competition Commission finds that the continuation~~ of ~~the Order to modify in whole or part~~ this Condition 3.1.8 ~~without modification operates or may be expected, the Licensee exercising its right to operate appeal to the CMA against the public interest, then until this Licence shall be modified~~ that decision in accordance with ~~the Order as~~

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~~a result~~ Article 14B of the Order, and the CMA in respect of the provisions to which the disapplication notice relates:

(A) quashing the decision of the Authority under Article 14E(2)(a) of the Order; and

(B) neither remitting the matter back to the Authority under Article 14E(2)(b) of the Order nor substituting its own decision for that reference and any findings by the Competition Commission, of the Authority under Article 14E(2)(c) of the Order,

then the Proposed Formula and the Forecast (in the form originally proposed by the Licensee under Condition 3.1.8.1) shall apply as if approved by the Authority pursuant to Condition 3.1.8.4(i).

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