

## The existing provisions of Special Condition 9C

### Condition 9C: Restriction of prices for transportation and storage services

1. The Licensee shall in setting its prices for the use of the Transmission System having effect on or after the appointed day take all reasonable steps to secure that in each Formula Year commencing on or after 1st April 1995 its Average Price per therm shall not exceed the Maximum Average Price per therm calculated in accordance with the following formula-

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where

$M_t$  = Maximum Average Price per therm in Formula Year t;

$RPI_t$  = the percentage change (whether of a positive or negative value) in the Retail Price Index between that published or determined with respect to October in Formula Year t and that published or determined with respect to the immediately preceding October;

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but, in relation to the Formula Year commencing on 1st April 1995,  $P_{t-1}$  (and, accordingly, in relation to the Formula Year commencing on 1st April 1996,  $P_{t-2}$ ) shall have the value of 13.792 pence;

$K_t$  = the correction per therm (whether of a positive or negative value) to be made in relation to Formula Year t which

- (a) as respects the Formula Year commencing on 1st April 1995, is derived from the following formula-

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and

- (b) as respects any succeeding Formula Year is derived from the following formula-

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in these formulae-

$T_{t-1}$  = Transportation Revenue for Formula Year  $t-1$  (excluding in the Formula Year commencing on 1st April 1994 that part of Transportation Revenue attributable to the period beginning on 1st April and ending on 30th September);

$T_x$  = that part of Transportation Revenue for the Formula Year commencing on 1st April

1995 attributable to the period beginning on 1st April and ending on 30th September;

$Q_{t-1}$  = Transportation Quantity for Formula Year  $t-1$  (excluding in the Formula Year commencing on 1st April 1994 the aggregate quantity of therms conveyed by the Licensee to premises or to other pipe-lines or pipe-line systems in the period beginning on 1st April and ending on 30th September);

$Q_x$  = the aggregate quantity of therms conveyed by the Licensee to premises or to other pipe-lines or pipe-line systems in the period beginning on 1st April 1995 and ending on 30th September 1995;

$Q_t$  = Transportation Quantity for Formula Year  $t$ ;

$M_{t-1}$  = Maximum Average Price per therm in Formula Year  $t-1$  which in relation to the Formula Year commencing on 1st April 1994 (taken as the Formula Year  $t-1$ ) shall be 13.792 pence;

$I_t$  = the percentage interest rate in Formula Year  $t$  which is equal to, where  $K_t$  (taking no account of  $I_t$  for this purpose) has a positive value, the average Specified Rate plus three or, where  $K_t$  (taking no account of  $I_t$  for this purpose) has a negative value, the average Specified Rate.

The subscript  $t$  represents the Formula Year.

2. (1) In this Condition-

“Average Price per therm” means-

- (a) in the Formula Year commencing on 1st April 1994, that part of Transportation Revenue derived in the period beginning on 1st October 1994 and ending on 30th September 1995 divided by that part of Transportation Quantity for that period; and
- (b) in any succeeding Formula Year, the Transportation Revenue for the Formula Year divided by the Transportation Quantity for that Formula Year;

“Formula Year” means a year commencing on 1st April;

“Retail Price Index” means the General Index of Retail Prices published by the Central Statistical Office each month in respect of all items or-

- (a) if the Index for the month of October or December in any year shall not have been published on or before the last day of February next following, such index for such month or months as the Director may after consultation with the Licensee determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the Index, such other index as the Director may after consultation with the Licensee determine to be appropriate in the circumstances;

“Shipper” means any gas shipper who has arranged with the Licensee for gas to be introduced into, conveyed by means of or taken out of the Transmission System;

“Specified Rate” means the base rate of Barclays Bank plc current from time to time during the period in respect of which the calculation falls to be made;

“therm” where used in this Condition, refers to the number of therms calculated in the same manner as the number of therms conveyed to premises or to pipe-line systems operated by other public gas transporters falls to be calculated in pursuance of section 12(1) of the Act or, where

that section does not apply, in accordance with the Licensee's network code, being the document prepared by the Licensee for the purposes of Condition 7(2)(a) (as from time to time modified in accordance with Condition 7) of the Standard Conditions and any such agreement as is mentioned in Condition 7(2)(a) of the Standard Conditions and designated by the Director as mentioned therein;

“Transmission Revenues” mean-

- (a) the turnover (measured on an accruals basis) derived from the supply of Transmission Services for Shippers (or for persons benefiting from an exemption under section 6A of the Act from the prohibition under section 5(1)(c) of the Act);
- (b) in respect of the period prior to the appointed day the turnover (measured on an accruals basis) that would have been derived from the agreements for the supply of Transmission Services that would have been entered into on the supposition required to be made for the purposes of condition 9B of the authorisation; and
- (c) in respect of any period whether prior to or after the appointed day, the turnover (measured on an accruals basis) that would have been derived under paragraph (a) or (b) above in respect of the supply of the corresponding Transmission Services had not persons other than the Licensee undertaken with Shippers (or persons benefiting from an exemption under section 6A of the Act from the prohibition under section 5(1)(c) of the Act) or (prior to the appointed day) the public gas supplier, as the case might be, and performed for gain or reward engagements of a kind ordinarily required by Shippers

after deduction of value added tax (if any) and any other taxes based directly on those turnovers;

“Transportation Quantity” means the aggregate quantity of gas, in therms, taken off the Transmission System as a result of arrangements with Shippers (or persons benefiting from an exemption under section 6A of the Act, from the prohibition under section 5(1)(c) of the Act) in the Formula Year and, in addition (in relation to any period during the Formula Year prior to the appointed day), by the public gas supplier for supply to tariff and contract customers or for other purposes;

“Transportation Revenue” means Transmission Revenues except to the extent that those revenues-

- (a) relate to the execution of works in connection with the provision of, or the carrying out of modifications to, points at which gas may be introduced into or taken off the Transmission System;
- (b) relate to the acquisition or disposal of gas for the efficient operation of the Transmission System;
- (c) derive from the supply of Transmission Services which otherwise are not ordinarily required by Shippers;
- (d) to the extent not excluded by sub-paragraph (b) above, derive from charges made by or payments made to the Licensee pursuant to provisions of the Licensee's network code, or of any arrangement or undertaking referred to in standard condition 5(3) of gas shippers' licences-
  - (i) which are made in connection with, or for the purposes of recovering costs incurred by the Licensee in connection with-
    - (aa) the balancing of its pipe-line system;

- (bb) adjustments to charges by way of reconciliation for the proper accounting for gas taken off the Transmission System as a result of arrangements with Shippers (or persons benefiting from an exemption under section 6A of the Act from the prohibition under section 5(1)(c) of the Act), or
- (cc) its functions as Top-up Manager (as defined in the Licensee's network code);
- (ii) and in relation to which the Licensee (in the case of (cc), in relation only to its functions as Top-up Manager) is intended neither to suffer any financial detriment nor to acquire any financial benefit by reason of the operation of the provisions in question;
- (e) subject in each case to condition 10(11) of the Standard Conditions, where the Licensee has made the election referred to in Condition 10(6) of the Standard Conditions, are of an amount equal to the amount of its aggregate payments made in pursuance of Condition 10(5)(b) thereof, or where it has not made such an election, derive from increases in its charges pursuant to Condition 10(5)(a) thereof;
- (f) derive from supplemental charges within the meaning of Condition 6 of the Standard Conditions;
- (g) represent revenue equal to any allowance made or charges (in respect of gas treated as not having been taken out of its pipe-line system) required to be foregone for the purpose of paragraphs (4) and (5) of Condition 24 of the Standard Conditions; or
- (h) derive from charges in respect of the provision of emergency services under contracts entered into pursuant to Condition 19

and for the purposes of this definition "the Licensee's network code" means the document prepared by the Licensee for the purposes of Condition 7(2)(a) (as from time to time modified in accordance with Condition 7) of the Standard Conditions and any such agreement as is mentioned in Condition 7(2)(a) of the Standard Conditions and designated by the Director as mentioned therein.

- (2) Except in so far as the Director consents to the Licensee not doing so and subject to sub-paragraph (3) below, the Licensee shall refer for determination by the Director any question whether, for the purposes of the definitions of "Transmission Revenues" and "Transportation Revenue" in sub-paragraph (1) above, the undertaking and performance for gain or reward of an engagement is or is not of a kind ordinarily required by Shippers or the supply of any Transmission Service is or is not ordinarily required by Shippers.
  - (3) Nothing in sub-paragraph (2) above shall require the Licensee to refer for determination to the Director after the appointed day any question which has been so referred under the authorisation before that day and any determination made by the Director, whether before or after that day in respect of any such referral, shall have effect in relation to the Licensee *mutatis mutandis* after the appointed day.
3. (1) If in respect of any Formula Year the Average Price per therm exceeds the Maximum Average Price per therm by more than 4 per cent. of the latter, the Licensee shall furnish an explanation to the Director and in the next following Formula Year the Licensee shall not effect any increase in prices unless it has demonstrated to the reasonable satisfaction of the Director that the Average Price per therm would not be likely to exceed the Maximum Average Price per therm in that next following Formula Year.
- (2) If, in respect of any two successive Formula Years, the sum of the amounts by which the Average Price per therm has exceeded the Maximum Average Price per therm is more than 5 per cent of the Maximum Average Price per therm for the second of those years, then in the next following Formula Year the Licensee shall, if required by the Director, adjust its prices

such that the Average Price per therm would not be likely, in the judgement of the Director, to exceed the Maximum Average Price per therm in that next following Formula Year.

4. (1) Where the Licensee publishes any statement or revised or amended statement as to its transportation charges under Condition 3 of the Standard Conditions, the Licensee shall not later than twenty-eight days prior to the time of such publication provide the Director (if the public gas supplier has not already done so under the corresponding provision of the condition of the authorisation from which this sub-paragraph is derived) with-
    - (a) a written forecast of the Maximum Average Price per therm, together with its components, in respect of the Formula Year in which the change in such charges is to take effect and also in respect of the next following Formula Year; and
    - (b) a written estimate of the Maximum Average Price per therm, together with its components, in respect of the Formula Year immediately preceding the Formula Year in which the change in such charges is to take effect unless a statement complying with paragraph 4(5) below in respect of that first mentioned Formula Year has been furnished to the Director before the publication of the proposed change in such charges.
  - (2) If within three months of the commencement of any Formula Year the Licensee has not published or effected any such change in its charges, the Licensee shall provide the Director (if the public gas supplier has not already done so as aforesaid) with a written forecast of the Maximum Average Price per therm, together with its components, in respect of that Formula Year.
  - (3) Any forecasts as aforesaid shall be accompanied by such information as may be necessary to enable the Director to be reasonably satisfied that the forecasts have been properly prepared on a consistent basis.
  - (4) Not later than 6 weeks after the end of a Formula Year the Licensee shall send to the Director a statement as to whether or not in its opinion paragraph 3(1) or (2) above applies in respect of that Formula Year and its best estimate of what K is likely to be in the following Formula Year.
  - (5) The Licensee shall send to the Director (if it has not already done so as aforesaid) not later than 3 months after the end of any Formula Year, a statement showing the Transportation Revenue and the Transportation Quantity in respect of that Formula Year.
  - (6) The statement referred to in sub-paragraph (5) above shall be accompanied by a report from the Auditor that in his opinion such statement fairly presents Transportation Revenue and Transportation Quantity in accordance with the requirements of this Condition.
5. (1) This Condition shall apply so long as this licence continues in force but shall cease to have effect if-
    - (a) the Licensee delivers to the Director a written request made in accordance with sub-paragraph (2) below or, before the appointed day, the public gas supplier delivered to the Director a written request made in accordance with the corresponding provision of the condition from which this paragraph is derived ("disapplication request") and the Director agrees in writing to the disapplication request; or
    - (b) its application is terminated by notice given by the Licensee in accordance with either sub-paragraph (3) or sub-paragraph (4) below.
  - (2) Any disapplication request shall be in writing, addressed to the Director, and shall state the date ("disapplication date") from which the Licensee wishes the Director to agree that this Condition shall cease to have effect, but the disapplication date therein stated shall not be before any date which is less than 18 months after the date upon which the disapplication request is delivered to the Director.

- (3) If the Director has not made a reference to the Monopolies Commission under section 24(1) of the Act relating to the modification of this Condition before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Director terminating the application of this Condition with effect from the disapplication date or a later date, save that no such notice may take effect before the later of 31 October 1997 and the end of a period of 12 months from the date of delivery of that notice to the Director.
- (4) If the Monopolies Commission makes a report on a reference made by the Director relating to the modification of this Condition after a disapplication request and such report does not include a conclusion that the cessation of this Condition, in whole or in part, operates, or may be expected to operate, against the public interest, the Licensee may within 30 days after the publication of the report by the Director deliver to him written notice terminating the application of the Condition with effect from the disapplication date or a later date.
- (5) Any disapplication request duly made prior to the appointed day under the corresponding condition of the authorisation shall have effect for the purposes of this paragraph *mutatis mutandis* and shall be treated as given on the date on which the same was made under the authorisation.