

CREDIT COMMITTEE

Terms of Reference

[Note: the Terms of Reference shall be attached to each Designated Operator's Network Code]

1. Purpose of the Committee

- 1.1 The Credit Committee is appointed, on behalf of Designated Operators and PS Gas Suppliers to manage the credit risk associated with the following defaults by a PS Gas Supplier (each a "**Default**" and the relevant PS Gas Supplier the "**Defaulting Shipper**"):
- (A) the non-payment or prospective non-payment by a PS Gas Supplier of any PS Transmission Payment (an "**NPTP Default**") or Code Charge (an "**NPCC Default**");
 - (B) any failure or prospective failure of a PS Gas Supplier to provide or maintain the requisite Level of Provided Credit in respect of PS Transmission Payments and Code Charges (an "**LPC Default**")
 - (C) A "**Termination Default**" which shall occur in any of the following circumstances, in accordance with section 16 of the Network Code:
 - (1) the non-payment of all or part of a PS Invoice by a PS Gas Supplier by the Second Due Date;
 - (2) the non-payment of all or part of any three PS Invoices by a PS Gas Supplier by their respective Due Dates;
 - (3) the non-payment of all or part of a CC Invoice by a PS Gas Supplier by the Second Due Date;
 - (4) the non-payment of all or part of any three CC Invoices by a PS Gas Supplier by their respective Due Dates;
 - (5) shall fail to submit a Nomination to The Transporter for a period exceeding 12 months and not hold any Firm Capacity provided that The Transporter shall have first consulted with the Shipper and obtained its agreement or the agreement of the Authority to such termination; or
 - (6) shall, if it has an Exit Point Registration in respect of an Exit Point in Northern Ireland, cease to hold a valid Gas Supply Licence.

provided that, in respect of (3) or (4), none of the CC Invoices to which they relate, is subject to a bona fide dispute in accordance with section 12.12; and

the Credit Committee shall also be empowered to direct, subject to the Authority's consent, and pursuant to a request made by a Designated Operator or PS Gas Supplier in accordance with Section 13.6.2, whether a PS Gas Supplier should be barred from meeting all or any part of its Level of Provided Credit through the provision of any or all forms of Unsecured Credit; and

(D) any such request shall be a “**US Default**” on the part of the PS Gas Supplier in respect of which the request is made.

1.2 The Credit Committee shall from time to time, when called upon in accordance with these Terms of Reference (the “**Terms**”), instruct a Designated Pipeline Operator from whose Designated Network a Defaulting Shipper exits gas (a “**Primary TO**”) as to the steps to be taken as a consequence of or in relation to the Default in accordance with the Terms.

1.3 These Terms shall come into effect on 01 October 2004.

2. **Interpretation**

2.1 Except as expressly provided in these Terms or where the context otherwise requires, all terms that are defined in the Code to which these Terms are attached, where used in these Terms, shall have the same meaning as is ascribed to them in the Code.

2.2 The following terms, when used in these Terms, except where expressly stated to the contrary or unless the context otherwise requires, shall have the corresponding meaning set out below:

“**Business Hours**” means any time between the hours of [09:00 and 18:00] Greenwich Mean Time on a Business Day;

“**Code Charges**” means any amounts payable by a PS Gas Supplier under a CC Invoice in accordance with a Designated Operator’s Network Code;

“**Defaulting Shipper**” means any PS Gas Supplier which is responsible for a relevant Default;

“**Directions**” means a direction of the Credit Committee in respect of a Default that is issued to the relevant Primary TO, any other Designated Operators and/or to a PS Gas Supplier in relation to the relevant Default and which direction is given in accordance with paragraph 6.1 of these Terms;

“**Licence**” means the licence to convey gas held by the relevant Designated Operator;

“**Meeting Notice**” means a notice of a Credit Committee Meeting containing all information listed in paragraph 3.3 of these Terms,

“**Members**” means all members of the Credit Committee, being: (a) all Designated Operators and all PS Gas Suppliers from time to time; and (b) the Authority;

“**Network**” means, in relation to gas plant owned by the relevant Designated Operator, the gas plant designated by an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003;

“**Network Code**” means a particular Designated Operator’s code governing the terms on which PS Gas Suppliers which are party to that code may convey gas across the Designated Operator’s pipe-line network;

- “Primary TO”** means the Designated Operator under whose Network Code the relevant Default has occurred;
- “PS Gas Supplier”** means any person authorised by licence under the relevant legislation to supply gas and who is entitled to exit gas from the postalised system; and
- “PS Transmission Payments”** means any payment which a Designated Operator is entitled or obliged to charge a PS Gas Supplier in accordance with Condition 2A of such Designated Operator’s Licence.

3. **Convening the Committee**

3.1 Meetings of the Credit Committee:

- (A) shall be convened by a Primary TO on the occurrence of any Default; or
- (B) may be requisitioned by any PS Gas Supplier

on the giving of no less than 3 days’ written notice (a **“Meeting Notice”**) to all of the Members in accordance with the provisions of this paragraph 3.

3.2 A Meeting of the Credit Committee may be called on shorter notice than required under paragraph 3.1 of these Terms if all Members entitled to vote on the particular matter or matters to be considered unanimously agree.

3.3 A Meeting Notice shall include:

- (A) details of the time and place of the meeting;
- (B) any information required to be submitted under 4.4 (A)
- (C) the name(s) of the Member(s) calling or requisitioning the meeting;
- (D) if issued in respect of a Default, the Defaulting Shipper’s identity and full details of the Default; and
- (E) if requisitioned under paragraph 3.1(B) the reason(s) for such a requisition, including full details of the matters to be discussed at the meeting, and the Directions sought by the requisitioners;
- (F) The name of the proposed chairman.

3.4 Each Meeting Notice shall be served by the Member calling the Meeting on each other Member by post to their respective addresses as specified in Schedule 1 to these Terms, or by fax and post to a Member who supplies a fax number in Schedule 1.

3.5 The Credit Committee shall convene at the time and date appointed in the Meeting Notice, such time to be within normal Business Hours and, subject to paragraph 3.2, no less than 3 Business Days and no more than 10 Business Days after the issue of such Meeting Notice. Meetings shall take place at the offices of the Authority unless another venue is unanimously agreed by all the Members entitled to attend such meeting.

4. Chairman, Quorum and Adjournment

4.1 The chairman of a meeting of the Credit Committee (the “**Chairman**”) shall be:

- (A) The Primary TO, if the Meeting is convened under paragraph 3.1(A); or
- (B) The Primary TO or the Authority, as specified under 3.3(F), by the PS Gas Supplier convening the Meeting if such Meeting is convened under paragraph 3.1(B).

If the Member which is appointed Chairman under (A) or (B) is not present at the Meeting then, before any business is conducted at such a meeting, the Member(s) present shall appoint a Chairman by agreement provided that, the Chairman shall be any one of the Designated Operators or the Authority present at the Meeting, and if no agreement is reached, shall be the Authority.

4.2 The quorum for a meeting of the Credit Committee shall be at least two PS Gas Suppliers entitled to vote in accordance with paragraph 5.2 on the matters in respect of which the meeting is called unless only one PS Gas Supplier is eligible to vote on such matters, in which case the quorum shall be that PS Gas Supplier.

4.3 If, within 30 minutes of the time appointed for the convening of a Credit Committee meeting, a quorum is not present, the Chairman may adjourn the meeting to any time in Business Hours not less than two Business Days, and not more than 10 Business Days, after the day on which the meeting was convened. Notice of an adjourned meeting (an “**Adjourned Meeting Notice**”) shall be sent to all Members on the day of such adjournment. Such Adjournment Notice shall contain the same details as required to be included in a Meeting Notice in accordance with paragraph 3 of these Terms. If at such adjourned meeting there is no quorum as provided for under paragraph 4.2, one PS Gas Supplier at that adjourned meeting shall comprise a quorum, provided that such PS Gas Supplier is not a Non-Voting Member by virtue of paragraph 5.2(C) or 5.2(D) in respect of the matters to be discussed at that Meeting.

4.4 Subject to paragraph 4.7, before the meeting, the Chairman shall be responsible for:

- (A) procuring in a timely manner any information required for the proper discussion of issues to be considered at the Meeting, including the submission of requests for information from the Primary TO and Defaulting Shipper prior to the Meeting; and
- (B) requesting from the PSA the PS Invoices required to calculate the voting rights of each member in accordance with paragraph 8.1.

4.5 At the meeting, the Chairman shall be responsible for:

- (A) chairing that meeting of the Credit Committee;
- (B) directing a discussion of:
 - (1) the nature of the Default or Defaults, if any, under consideration, with, where appropriate, the aid of a Debt Report;
 - (2) appropriate steps to be taken by the Primary TO to remedy the Default, with reference to the Licence and the Network Code; and

- (3) appropriate sanctions, if any, to be applied by the Primary TO to the Defaulting Shipper;

4.6 After the Meeting, the Chairman shall be responsible for:

- (A) keeping minutes of the meeting; and
- (B) distributing written copies of those minutes and any Directions to all Members in accordance with paragraph 8.4.

5. **Composition and Voting**

5.1 On each matter considered by a Credit Committee meeting, Members of the Credit Committee shall be divided into Members entitled to vote ("**Voting Members**") and Members not entitled to vote ("**Non-Voting Members**"). For the avoidance of doubt, if a Member is not entitled to vote on a particular matter due to paragraph 5.2 they may, subject always to paragraph 5.2, vote on other matters under consideration at the same meeting.

5.2 The following Members shall be Non-Voting Members in respect of a particular matter under consideration at a Meeting:

- (A) the Authority;
- (B) each Designated Operator;
- (C) the PS Gas Supplier in respect of which the Default under consideration arose; and
- (D) in relation to any Directions which are put to the vote of the Credit Committee that pertain to an NPCC Default, PS Gas Suppliers not party to the relevant Network Code.

5.3 Subject to paragraphs 5.2(C) and (D), each PS Gas Supplier shall be a Voting Members in respect of a matter under consideration at a Meeting.

6. **Credit Committee Powers**

6.1 Subject to paragraphs 6.2 and 6.3, the Credit Committee shall have the power to make any of the following directions (each a "**Direction**") in accordance with these Terms and the terms of the network code:

- (A) Where a Termination Default has occurred, require a Primary TO to terminate its Defaulting Shipper's Accession Agreement;
- (B) Where a Termination Default has occurred, require a Primary TO not to terminate its Defaulting Shipper's Accession Agreement;
- (C) require a Primary TO to enforce a specified sum of the security it holds in relation to its Defaulting Shipper in favour of the POT Account in the case of an NPTP Default, or the Primary TO's Account in respect of an NPCC Default;
- (D) require a Primary TO to settle a claim for non-payment against its Defaulting Shipper on such terms as the Credit Committee determines;

- (E) where an LPC Default has occurred, require the Primary TO to waive the requirement for a Defaulting Shipper to provide the Level of Provided Credit which would otherwise be required of that Shipper, for a specified period;
- (F) in the event of an NPTP Default or an NPCC Default, require the Primary TO to agree a repayment plan on such terms as the Credit Committee directs with a Defaulting Shipper, which specifies dates on which future repayments will be made;
- (G) where the NPTP Default or the NPCC Default is a prospective Default, waive the need for the Primary TO to convene a further meeting of the Credit Committee as prescribed by its Licence on the occurrence of the notified Default;
- (H) require a Primary TO to engage the services of recognised legal and/or financial professionals in relation to the resolution of the circumstances giving rise to a Default;
- (I) where the Voting Members of the Credit Committee reasonably believe further pursuit of a non-payment likely to be economically detrimental to the PS Gas Suppliers, they may vote to direct a Primary TO not to require the Primary TO to take any further action in respect of that non-payment;
- (J) require a TO to disallow a PS Gas Supplier from meeting its Level of Provided Credit through the provision of Unsecured Credit; and
- (K) require a primary TO to disallow the Shipper from:
 - (1) acquiring Firm capacity by a transfer;
 - (2) reserving additional Firm capacity;
 - (3) submitting a Nomination in respect of an Interruptible Nominated Quantity; or
 - (4) applying for any Exit Point Registration.

6.2 Any Direction given under the powers conferred at paragraph 6.1 (B) and paragraph 6.1 (J) shall not be capable of exercise until the Authority has given its consent.

6.3 Where the Credit Committee makes a Direction under paragraph 6.1(A) in respect of:

- (A) an NPTC Default, it may only direct the Primary TO to enforce security up to the value calculated in accordance with section 13.3.2 of the Code or, where appropriate, the equivalent sections in another Network Code; and
- (B) an NPCC Default, it may only direct the Primary TO to enforce security up to the value calculated in accordance with section 13.3.3 of the Code or, where appropriate, the equivalent sections in another Network Code.

7. **Attendance and Proceedings at Meetings**

7.1 Each Member may be represented by up to three persons at a Credit Committee Meeting.

7.2 On receipt of a Meeting Notice and until the issue of a Direction, all Members shall meet as frequently as is reasonably necessary to carry out their duties.

- 7.3 A person shall be treated as present in person at a Meeting notwithstanding that he is not physically present at the place where the meeting is held if he is in continuous communication with the meeting by conference telephone or other communication equipment permitting each person physically present at or so in communication with the meeting to hear and be heard by each other person.
- 7.4 If any Member fails or is unable to attend a meeting (an “**Absent Member**”) it may in writing appoint a nominee (a “**Nominee**”) to speak and/or vote for it. A Nominee may be any other Member of the Credit Committee who consents to act as a Nominee on the Absent Member’s behalf. Any Member, present at a meeting of the Credit Committee, and acting as Nominee only counts once toward the quorum (on its own behalf) and may not vote on behalf of the Absent Member on any matter in respect of which the Nominee or the Absent Member is a Non-Voting Member.
- 7.5 Members shall keep confidential all information which comes into their possession in carrying out their duties under these Terms and shall not communicate any Credit Committee or personal view regarding any matter discussed at a Credit Committee meeting to a third party except with the consent of the Credit Committee, where its Licence or Network Code requires, where the Authority requires, or as required by law.
- 7.6 Members shall use all reasonable endeavours to make Directions promptly and to the best of their ability, and shall conduct themselves honestly and diligently whilst carrying out their duties under these Terms. Include EC drafting here.
- 7.7 The proceedings of the Credit Committee shall be conducted in private.
- 7.8 The Chairman shall keep a minute of the meeting of the Credit Committee and shall circulate such minute to all Members Present within 3 Business Days of the relevant Meeting. The Chairman shall send a copy of such minute to the Authority, and any Member who disputes the accuracy of such minute shall make such amendments or additions it sees fit and send those amendments or additions to the Authority within 3 Business Days of receipt of the minute from the Chairman.
- 7.9 A person shall not represent a Member if:
- (A) circumstances exist which in the opinion of the Authority would make it difficult for such Member to act in the best interests of the Credit Committee or render such membership uncondusive to the fair operation of the Credit Committee;
 - (B) he becomes bankrupt or compounds with his creditors;
 - (C) he, or any body of which he is, or has been, a director, partner or controller be the subject of any complaint or investigation of misconduct or of malpractice in connection with his or its business affairs and the Authority decides that it is undesirable that he be a Member; or
 - (D) he is dismissed or requested to resign from any office of employment or from any fiduciary office or position of trust, whether or not remunerated, and the Authority resolves that it is undesirable that he be a Member.

8. **Directions**

- 8.1 At a Meeting a Voting Member shall hold one vote per £1 worth of PS Transmission Payments invoiced to it during the six Months immediately prior to the Month in which the Meeting is convened.
- 8.2 Directions may be passed by the written consent of all Members who would, if present at a meeting of the Credit Committee called to decide such a matter, be Voting Members and shall be in the form submitted to all Members by the convening Member prior to a Meeting, and, if passed, will obviate the need for such Meeting.
- 8.3 Directions shall be passed by the Credit Committee:
- (A) at a Meeting by a simple majority of the votes cast by Members present and entitled to vote (abstentions not forming part of the count for these purposes); or
 - (B) by the Chairman on receipt of the written consent of all Members entitled to vote to any draft Directions submitted to all Members in writing prior to the Meeting.
- 8.4 Written copies of all Directions passed at a meeting shall be sent to all Members no later than two Business Days after the meeting is concluded by the Chairman.

9. **Fees and Expenses**

- 9.1 Members of the Credit Committee shall be responsible for their own costs and expenses incurred in fulfilling their duties.

10. **Modification**

- 10.1 For the avoidance of doubt, the Terms of Reference may be modified in accordance with the Modification Rules.

SCHEDULE 1

Addresses