

## CREDIT COMMITTEE

### Terms of Reference

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

#### 1. Purpose of the Committee

1.1 The Credit Committee is appointed, on behalf of Designated Pipe-line 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) a "Termination Default" which shall occur in any of the following circumstances, in accordance with section 16 of the Network Code:

(1) ~~(B) any~~ the 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:~~

(2) ~~(1)~~ the non-payment of all or part of a PS Invoice by a PS Gas Supplier by the Second Due Date;

(3) ~~(2)~~ the non-payment of all or part of any three or more PS Invoices by a PS Gas Supplier by their respective Due Dates;

(4) ~~(3)~~ the non-payment of all or part of a CC Invoice by a PS Gas Supplier by the Second Due Date;

(5) ~~(4)~~ the non-payment of all or part of any three or more CC Invoices by a PS Gas Supplier by their respective Due Dates;

(6) ~~(5) if a PS Gas Supplier shall fail~~ have failed to submit a Nomination to ~~The Transporter~~ the relevant Designated Pipe-line Operator for a period exceeding 12 months and ~~not~~ having ceased to hold any Firm Capacity provided that ~~The Transporter~~ that Designated Pipe-line Operator shall have first consulted with the ~~Shipper~~ PS Gas Supplier and obtained its agreement or the agreement of the Authority to such termination; ~~or~~

(7) ~~(6) if a PS Gas Supplier shall, if it has an Exit Point Registration in respect of an Exit Point in Northern Ireland, cease~~ have ceased to hold a valid Gas Supply Licence; ~~or~~

(8) breach of section 16.3.2 of the Network Code

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 of the Network Code; or~~

(C) if an administrator is appointed over any part of the assets of a Designated Pipe-line Operator or PS Gas Supplier (an "Administration Default")

1.2 ~~the~~The Credit Committee shall also be empowered to direct, subject to the Authority's consent, and pursuant to a request made by a Designated Pipe-line Operator or PS Gas Supplier in accordance with ~~Section 13.6.2,~~section 13.6.2 of the Network Code, 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~~ Any such request shall be deemed a "US Default" on the part of the PS Gas Supplier in respect of which the request is made.

~~(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.~~

1.3 Each of the defaults referred to in paragraphs 1.1 and 1.2 shall be a "Default" for the purposes of these Terms of Reference ("Terms") and the relevant PS Gas Supplier shall be the "Defaulting Shipper".

1.4 ~~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~~Pipe-line Operator from whose Designated Network a Defaulting Shipper exits gas (a "Primary TO") and the Defaulting Shipper as to the steps to be taken as a consequence of or in relation to the Default in accordance with the Terms.

1.5 ~~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 Network Code to which these Terms are attached, where used in these Terms, shall have the same meaning as is ascribed to them in the Network 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 Pipe-line Operator's Network Code;

**"Defaulting Shipper"** ~~means any PS Gas Supplier which is responsible for a relevant~~ has the meaning ascribed in paragraph 1.3; ~~Default;~~

**"Directions**Direction" means a direction of the Credit Committee, in respect of a Default, that is issued to the relevant Primary TO, any other

Designated Pipe-line 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 Pipe-line Operator;
- “Meeting Notice”** means a notice of a Credit Committee ~~Meeting~~meeting containing all information listed in paragraph 3.3 of these Terms;
- “Members”** means all members of the Credit Committee, being: (a) all Designated Pipe-line Operators ~~and~~ (b) all PS Gas Suppliers from time to time; and ~~(b)~~ the Authority;
- “Network”** means, in relation to gas plant owned by the relevant Designated Pipe-line 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 Pipe-line Operator’s code governing the terms on which PS Gas Suppliers which are party to that code may convey gas ~~across~~through the Designated Pipe-line Operator’s pipe-line network;
- “Primary TO”** means the Designated Pipe-line Operator under or in relation to 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 Pipe-line Operator is ~~entitled or~~ entitled or obliged to charge a PS Gas Supplier in accordance with Condition 2A of such Designated Pipe-line 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~~Business Days’ written notice (a ‘**Meeting Notice**’) to all of the Members in accordance with the provisions of this paragraph 3.

#### 3.2 A ~~Meeting~~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; and
- (F) ~~The~~the name of the proposed chairman.

3.4 Each Meeting Notice shall be served by the Member calling the ~~Meeting~~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).~~

4.1 ~~If the Member~~The chairman of a meeting of the Credit Committee (the "Chairman") shall be the relevant Primary TO, provided that if the Primary TO which is appointed Chairman ~~under (A) or (B)~~ is not present at the ~~Meeting~~meeting then, before any business is conducted at such a meeting, the Member(s) present shall appoint a Chairman by agreement and provided further that, the Chairman shall be any one of the Designated Pipe-line Operators or the Authority present at the ~~Meeting~~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.~~either:

(i) only one PS Gas Supplier is eligible to vote on such matters, in which case the quorum shall be that PS Gas Supplier; or

(ii) no PS Gas Supplier is eligible to vote on such matters, in which case the Chairman shall constitute a quorum.

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 ~~40~~ten 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 by the Chairman on the day of such adjournment. Such ~~Adjournment~~Adjourned Meeting 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 entitled to vote 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~~meeting, including the submission of requests for information from the Primary TO and Defaulting Shipper prior to the ~~Meeting~~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~~meeting, the Chairman shall be responsible for:
- (A) ~~keeping~~producing minutes of the meeting; and
  - (B) distributing written copies of those minutes and any Directions to all Members in accordance with ~~paragraph 8.4.~~paragraphs 7.8 and 8.4.

## 5. Composition and ~~Voting~~Entitlement to Vote

- 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 Pipe-line 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~~Member in respect of a matter under consideration at a Meeting.

5.4 ~~If no Member at the relevant quorate meeting is entitled to vote the Chairman shall have a vote. In no other circumstances shall the Chairman, in that capacity, be entitled to vote at meetings.~~

## 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~~Network Code:

- (A) ~~Where~~where a Termination Default or an Administration Default has occurred, require a Primary TO to terminate its Defaulting Shipper’s Accession Agreement;
- (B) ~~Where~~where a Termination Default or an Administration Default has occurred, require a Primary TO not to terminate its Defaulting Shipper’s Accession Agreement;
- (C) ~~where a breach of section 16.3.2 of the Network Code has occurred, to determine whether that breach of the Network Code is capable of remedy;~~
- (D) ~~(G)~~where any Default has occurred, 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~~PoT Account in the case of an NPTP Default, or the Primary TO’s Account in respect of an NPCC Default;
- (E) ~~(D)~~where any Default has occurred, require a Primary TO to settle a claim for non-payment against its Defaulting Shipper on such terms as the Credit Committee determines;
- (F) ~~(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 Defaulting Shipper, for a specified period;
- (G) ~~(F)~~ in the event of an NPTP Default or an NPCC Default, require the Primary TO to agree a ~~repayment~~payment plan on such terms as the Credit Committee directs with a Defaulting Shipper, which specifies dates on which future ~~repayments~~payments will be made;
- (H) ~~(G)~~ where ~~the an~~ NPTP Default or ~~the an~~ 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;

(I) ~~(H) where any Default has occurred,~~ require a Primary TO to engage the services of recognised legal and/or financial professionals in relation to ~~the~~that resolution of the circumstances giving rise to a Default;

(J) ~~(I) where the Voting Members of the Credit Committee reasonably believe further pursuit of a non-payment is 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 that no~~ further action need be taken in respect of that non-payment;

(K) ~~(J) require a TO to disallow~~where a request for a Direction from the Credit Committee relating to a US Default has been made require the relevant Designated Pipe-line Operator to not permit a PS Gas Supplier ~~from meeting its to meet the requisite~~ Level of Provided Credit through the provision of Unsecured Credit; ~~and~~

(L) ~~(K) where any Default has occurred,~~ require a ~~primary~~Primary TO to disallow the Defaulting Shipper from:

- (1) acquiring Firm ~~capacity~~Capacity by a transfer;
- (2) reserving additional Firm ~~capacity~~Capacity;
- (3) submitting a Nomination in respect of an Interruptible Nominated Quantity; or
- (4) applying for any Exit Point Registration-;

(M) where a request for a Direction from the Credit Committee has been made under section 13.6.3 of the Network Code, require a Primary TO to re-assess a PS Gas Supplier's Level of Required Credit and/or a PS Gas Supplier's Level of Provided Credit; and

(N) in the event of a US Default, a Direction in accordance with paragraph 1.2.

6.2 Any Direction given under the powers conferred at paragraph 6.1 (B) and paragraph 6.1 ~~(J)~~(K) shall not be capable of exercise unless and 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~~NPTP 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 Network 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 Network 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~~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~~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~~any person who is not a Member except with the consent of the Credit Committee, where its ~~Licence~~respective licence or Network Code requires, where the Authority requires, or as required by law.
- 7.6 Any Voting Member may require that a Defaulting Shipper be excluded from any part of the relevant meeting of the Credit Committee.
- 7.7 ~~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~~ and shall act without undue discrimination against any Shipper.
- 7.8 ~~7.7~~ The proceedings of the Credit Committee shall be conducted in private.
- 7.9 ~~7.8~~ The Chairman shall keep a minute of the meeting of the Credit Committee and shall circulate such minute to all Members ~~Present~~present within 3 Business Days of the relevant Meeting. except such minute shall not be circulated to, or otherwise provided to the Defaulting Shipper. 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.
- 7.10 ~~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~~person to act in the best interests of the Credit Committee or render such ~~membership uncondusive~~representation detrimental 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~~represent 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~~represent a Member.

## 8. Directions and Voting

8.1 At a ~~Meeting~~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~~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~~meeting, and, if passed, will obviate the need for such ~~Meeting~~meeting.

8.3 Directions shall be passed by the Credit Committee:

(A) at a ~~Meeting~~quorate 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~~meeting.

8.4 Written copies of all Directions passed at a meeting shall be sent to all Members no later than ~~two~~three 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~~these Terms of Reference may be modified in accordance with the Modification Rules.

## SCHEDULE 1

### Addresses

*[NOTE: addresses and fax numbers of all Designated Pipe-line Operators and Shippers to be included.]*

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