

MODIFICATION 0674

PERFORMANCE ASSURANCE TECHNIQUES AND CONTROLS

Note 1: The PACCD will contain the rules relating to PAC composition, proceedings and decision making etc. It will be subject to V12 governance.

Note 2: The PAFD will contain the rules relating to the scope of performance assurance, data provision, reporting, availability and use of PATs and the appointment of the PAFA. It will be subject to PAC governance (and not V12 governance).

Note 3: A definition of 'Settlement' has been added – to sit alongside 'LDZ Settlement Related Obligations'.

Note 4: Current paragraph 16.5 has been deleted – instead the reporting rules will be included in the PAFD.

[Draft] legal text

TRANSPORTATION PRINCIPAL DOCUMENT

SECTION V – GENERAL

Amend paragraph 12 to read as follows:

12.1 GENERAL PROVISIONS RELATING TO UNC RELATED DOCUMENTS

12.2 Purpose

The purpose of this Section is to establish generic governance arrangements in respect of the following UNC Related Documents (each a “**Document**” and collectively the “**Documents**”):

- (a) Network Code Operations Reporting Manual as referenced in Section V9.4;
- (b) Network Code Validation Rules referenced in Section M5.3.3;
- (c) ECQ Methodology as referenced in Section Q6.1.1(c);
- (d) Measurement Error Notification Guidelines for NTS to LDZ and LDZ to LDZ Measurement Installations as referenced in OAD Section D3.1.5.
- (e) the Class 1 Ratchet Charge Guidance Document referred to in Section B4.7;
- (f) the Customer Settlement Error Claims Process Guidance Document referenced in Section E1.3.10; and
- (g) the Performance Assurance Framework Performance Assurance Committee Constitution Document referenced in paragraph 16.1.4(d); and 16.2.

~~(h) — the Performance Assurance Report Registers referenced in paragraph 16.5.1.~~

12.3 Publication Requirements

Each Document shall be kept up to date and published by the Transporters on the Joint Office of Gas Transporters website.

12.4 Modifications

Should a User or Transporter wish to propose modifications to any of the Documents, such proposed modifications shall be submitted to the Uniform Network Code Committee and considered by the Uniform Network Committee or any relevant sub-committee where the Uniform Network Committee so decide by majority vote.

12.5 Approved Modifications

12.4.1 If the event that ~~the~~ a proposed modification is approved by a majority vote of the Uniform Network Code Committee, the modification shall be implemented. Where the Uniform Network Code Committee fails to achieve majority approval the proposed modification shall be considered in accordance with the provisions set out in Section 7 of the Uniform Network Code Modification Rules unless the Uniform Network Code Committee determines otherwise.

12.4.2 Each revised version of a Document shall be version controlled and retained by the Transporters. It shall be made available on the Joint Office of Gas Transporters website.

Delete all text in paragraphs 16.1, 16.2 and 16.3 and insert new text to read as follows:

16 PERFORMANCE ASSURANCE

16.1 Interpretation

16.1.1 For the purposes of this paragraph 16:

- (a) "LDZ Settlement Related Obligations" means obligations under the Code [including obligations undertaken by the CDSP by way of Direct Functions on behalf of the DNOs], the standard of performance of which (including any delays or failures in the performance of which) has, or may have, a material impact on the following matters:
- (i) the quantities of gas treated as offtaken from Local Distribution Zones;
 - (ii) the quantities of gas treated as delivered at LDZ Entry Points; or
 - (iii) reconciliations and adjustments in respect of gas offtaken from Local Distribution Zones and/or delivered to LDZ System Entry Points;
- (b) "Performance Assurance Framework Administrator" or "PAFA" means the person from time to time appointed and engaged to act as such pursuant to paragraph 16.6;
- (c) "Settlement" means the determination and settlement of amounts payable in respect of Energy Balancing Charges in accordance with the Code.

16.1.2 For the avoidance of doubt, LDZ Settlement Related Obligations shall not include any obligations relevant to the determination of the quantities of gas delivered or treated as delivered to the NTS or from the NTS to any LDZ.

Commented [Dentons1]: The CDSP only has obligations under the DSC; it is not party to the Code and therefore cannot have any obligations under it.

16.2 Performance Assurance Objective

16.2.1 The "Performance Assurance Objective" is the objective, in the context of a Party complying with its LDZ Settlement Related Obligations, of the Party undertaking its obligations in such a manner as not to prejudice accurate and timely Settlement.

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Commented [Dentons2]: For discussion.

16.2.2 Each Party:

- (a) acknowledges the achievement of the Performance Assurance Objective by all Parties to the Code is desirable;
- (b) agrees to act at all times in performing its LDZ Settlement Related Obligations in such manner as to facilitate the achievement of the Performance Assurance Objective;
- (c) agrees to co-operate with each other Party to facilitate the achievement of the Performance Assurance Objective by each such other Party.

16.2.3 The standard of performance of a Party in facilitating the achievement of the Performance Assurance Objective shall be determined by the Performance Assurance Committee in accordance with (and in the manner described in) the Performance Assurance Framework Document and to the extent applicable to such Party.

16.2.4 [Notwithstanding Section GT B4.2.2.] each Party shall provide the Performance Assurance Committee with access to all of its records, data and other information as may be reasonably required in accordance with the requirements of the Performance Assurance Framework Document to enable the Performance Assurance Committee to review and report from time to time on the standard of performance by such Party in relation to the requirement in paragraph 16.2.2.

16.3 Performance Assurance Committee

16.3.1 There shall be established for the purposes of this paragraph 16 a Network Code Sub-Committee ("Performance Assurance Committee") which shall perform the functions and have the powers and duties provided for in this paragraph 16 and the Performance Assurance Framework Document.

16.3.2 The "Performance Assurance Committee Constitution Document" is the document issued by [the Transporters] and so entitled and governed and amended in accordance with Section V12.

16.3.3 The Performance Assurance Committee Constitution Document shall specify:

- (a) the basis on which Performance Assurance Committee members are to be appointed and from time to time removed and/or replaced;
- (b) the basis on which a person (not being a committee member) will be appointed to chair each meeting of the Performance Assurance Committee;
- (c) the basis on which a person (not being a committee member) will be appointed as secretary to the Performance Assurance Committee;

- (d) the rules and procedures relating to the proceedings of the Performance Assurance Committee;
- (e) the voting arrangements and the basis on which decisions of the Performance Assurance Committee will be made (including the basis on which the Performance Assurance Framework Document may be amended); and
- (f) the basis on which decisions of the Performance Assurance Committee may be appealed.

16.3.4 Each Party shall jointly and severally with each other Party indemnify and keep indemnified:

- (a) the Performance Assurance Committee and each member of such committee (including their respective alternates) from and against any and all costs (including legal costs) charges, expenses, damages or liabilities incurred or suffered by it or a member in acting as, and in performing the functions of the Performance Assurance Committee or a member of the Performance Assurance Committee;
- (b) the Performance Assurance Framework Administrator in respect of work undertaken at the request of the Performance Assurance Committee or pursuant to the PAFA Contract from and against any and all costs (including legal costs) charges, expenses, damages or liabilities incurred or suffered by it in undertaking such work.

16.3.5 The Parties to Code shall, on upon request, provide the members if the Performance Assurance Committee, the Performance Assurance Committee and the Performance Assurance Framework Administrator with a written deed of indemnity for the purposes of paragraph 16.3.4.

16.3.6 Each Party, in any capacity which that Party may have, and to the fullest extent permitted by law, waives any claims against all of the bodies and persons listed in paragraph 16.3.4 and releases each such body and person from ant liability arising from acting or performing the functions of the Performance Assurance Committee or a member thereof or undertaking work referred to in paragraph 16.3.4.

16.3.7 A member of the Performance Assurance Committee shall not be entitled to receive any papers a working papers, opinions, reports or other documentation relating to the proceedings of the Performance Assurance Committee or attend a meeting of the Performance Assurance Committee until such time as the member as entered into a confidential undertaking on such terms as the Performance Assurance Committee may require and provided a copy of such signed undertaking to the secretary of the Performance Assurance Committee.

16.3.8 For the purposes of paragraph 16.3.9 the following are "relevant matters" in relation to a member of the Performance Assurance Committee:

- (a) the performance of the member's employer of any Affiliate of the member's employer;
- (b) the application of any Performance Assurance Technique to the member's employer of any Affiliate of the member's employer.

16.3.9 A member of the Performance Assurance Committee shall not:

- (a) participate as a member of the Performance Assurance Committee in the consideration of any relevant matter;

- (b) be counted in ascertaining whether a quorum is present at a meeting of the Performance Assurance Committee convened to consider any relevant matter; or
- (c) be entitled to receive any working papers, opinions, reports or other documentation which have been prepared for the Performance Assurance Committee in connection with any relevant matter insofar as they relate specifically to his employer or any Affiliate of his employer.

16.3.10 A member of the Performance Assurance Committee shall not disclose to his employer or any Affiliate of his employer confidential information which he has received in his capacity as a member of the Performance Assurance Committee unless required to do so:

- (a) by any Legal Requirement;
- (b) in order for his employer or any such Affiliate to comply with the conditions of any licence with which his employer or any such Affiliate, as the case may be, is required to comply;
- (c) by any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (d) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to him or his employer or any such Affiliate, as the case may be.

in any of which events the member of the Performance Assurance Committee shall first be required to give written notice of the required disclosure to the Performance Assurance Committee.

Commented [Dentons3]: This could be moved to the PACCD.

16.4 Performance Assurance Functions

16.4.1 The functions of the Performance Assurance Committee ("PAC Functions") are:

- (a) the establishment and maintenance of the Performance Assurance Framework Document;
- (b) the monitoring of each Party's performance in relation to the requirement in paragraph 16.2.2;
- (c) preparation and publication of Performance Assurance Reports;
- (d) the implementation and administration of Performance Assurance Techniques; and
- (e) such other functions as may be delegated to it by the UNC Committee.

16.4.2 The Performance Assurance Committee may establish a sub-committee for such purpose (within the scope of the PAC Functions) and comprising such members and on such terms as it decides.

16.4.3 The Performance Assurance Committee may at any time and from time to time delegate all or any part of the PAC Functions to the Performance Assurance Framework Administrator.

16.5 Performance Assurance Framework Document

16.5.1 The Performance Assurance Committee shall prepare and maintain (and may from time to time amend in accordance with the requirements of the Performance Assurance Committee Constitution Document) the "Performance Assurance Framework Document" which shall specify:

- (a) performance assurance procedures and the basis on which a Party will be required to participate in such procedures;
- (b) the records, data and other information which a Party is required to give the Performance Assurance Committee and the Performance Assurance Framework Administrator access to for the purposes of performance assurance;
- (c) the process by which, and the time by which, a Party is to respond to a request for records, data and other information from the Performance Assurance Committee and the Performance Assurance Framework Administrator;
- (d) the scope and contents of the registers to be maintained by, and the reports to be prepared and published by, the Performance Assurance Committee relating to the performance of each Party in relation to the requirement in paragraph 16.2.2 ("Performance Assurance Reports");
- (e) the Performance Assurance Techniques available to the Performance Assurance Committee and the basis on which such techniques will be implemented and administered;
- (f) the procedure for the appointment of the Performance Assurance Framework Administrator, and the terms of any such appointment; and
- (g) the functions of the Performance Assurance Framework Administrator.

16.5.2 The Performance Assurance Committee shall prepare and maintain (and may from time to time amend, the techniques ("Performance Assurance Techniques") which may be implemented by the Performance Assurance Committee in relation to a Party to facilitate the better achievement of the Performance Assurance Objective by such Party.

16.5.3 Each Party shall comply with the requirements of the Performance Assurance Framework Document to the extent applicable to such Party.

Renumber current paragraphs 16.3 and 16.4 as paragraphs 16.6 and 16.7 and amend as shown below:

16.6 Appointment of ~~PAFA~~the Performance Assurance Framework Administrator ("PAFA")

16.6.1 A person shall be appointed by the CDSP, in accordance with this paragraph 16.36, for the purposes of conducting the functions ascribed to the PAFA by the ~~PAF-Performance Assurance Framework~~ Document (as at the time of such appointment), ~~including the preparation, maintenance and management of the registers referred to in paragraph 16.1.1(d)(i) and the determination of DNOs', the CDSP's and Shipper Users' levels of performance of specific LDZ Settlement Related Obligations].~~

Commented [Dentons4]: Consider setting out in detail in the PACCD the governance of the PAFD.

16.6.2 [The CDSP shall, subject to and in accordance with the PAF-Performance Assurance Document and (where consistent with the provisions of [this paragraph 16] ~~and the PAF Document~~) the requirements of the PAC, as soon as reasonably practicable:

- (a) prepare arrangements and documentation for a competitive tender for the appointment of a person as PAFA in accordance with relevant Legal Requirements;
- (b) conduct such tender on the basis of such arrangements and documentation, including with respect to any such pre-qualification and selection criteria as may be specified by the PAC-Performance Assurance Committee;
- (c) review and assess the proposals made by persons tendering for appointment as the PAFA pursuant to the tender;
- (d) where appropriate for the purposes of determining which of such persons to appoint as PAFA, enter into discussions with one or more of them;
- (e) use reasonable endeavours to enter into a contract with the PAFA (an "PAFA Contract") with the person selected on the basis of the competitive tender process, such contract to commence as soon as reasonably practicable and to provide for the PAFA to act with all due skill, care and diligence and impartiality when performing of its duties-functions thereunder and in so far as reasonably practicable to act equitably as between Shipper Users, DNOs ~~and the CDSP in identifying, [monitoring and reporting on material risks in connection with specific LDZ Settlement-Related Obligations with respect to the matters specified at paragraph 16.1.1(a)(i) to (iii)]~~;
- (f) notify ~~Shipper Users and Transporters~~ all Parties to the Code of the appointment of the PAFA; and
- (g) perform the CDSP's obligations and exercise the CDSP's rights under the PAFA Contract.

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16.6.3 Without prejudice to the requirements of the PAF-Performance Assurance Framework Document, the CDSP may seek guidance from the PAC-Performance Assurance Committee in relation to anything they propose to do or any other matter arising in connection with their activities under paragraph 16.36.2, and may act in accordance with such guidance.

16.6.4 Nothing in this paragraph 16 shall require the CDSP to enter into a PAFA Contract where in the CDSP's reasonable opinion:

- (a) it would be unlawful to do so; or
- (b) the contract could give rise to the CDSP incurring any liability, other than in respect of their own wilful misconduct, gross negligence or fraud.

16.6.5 This paragraph 16.36 shall apply where the PAC requires the PAFA to be appointed by the DNOs or, on expiry or termination of a PAFA Contract, replaced.

16.7 Terms of engagement of PAFA and cost recovery

16.7.1 The CDSP may enter into a PAFA Contract on terms which limit or exclude the liability (as to such matters as may be provided in such contract) of the PAFA.

16.7.2 For the avoidance of doubt, the CDSP shall not be the agent or trustee of any Party for the purposes of the PAFA, and the CDSP shall owe no duties or responsibilities to any Party in respect of the PAFA Contract other than as provided in this paragraph 16.

16.7.3 The CDSP shall provide the PAFA with such information as he reasonably requires for the purpose of performing his functions under the PAF Contract and such assistance as he may reasonably require in interpreting such information.

Delete all text in paragraph 16.8 and insert new text to read as follows:

16.8 Appointment of PA Representative

16.8.1 Each Party shall nominate (and may from time to time remove and replace) a representative ("PA Representative"), of suitable seniority and qualification, to represent the Party in relation to all performance assurance matters and to attend meetings of the Performance Assurance Committee where requested to do so.

16.8.2 The performance Assurance Committee is entitled to assume that each PA Representative is authorised to take any decision (on matters relating to performance assurance) on behalf of the Party unless such representative gives advance notice to the contrary.

16.8.3 Where the Performance Assurance Committee or the Performance Assurance Framework Administrator wish to raise or discuss any matter with a Party relating to that Party's performance in relation to performance assurance the Performance Assurance Committee or the Performance Assurance Framework Administrator shall in the first instance contact the Party's PA Representative and provide the PA Representative with appropriate details of the matter(s) to be raised or discussed.

GENERAL TERMS

SECTION B – GENERAL

Amend paragraph 4.3.1 to read as follows:

4.3.1 The Uniform Network Code Committee may by panel majority establish sub-committees (each a "**Network Code Sub-committee**" or, for the purposes of this paragraph 4, a "**Sub-committee**") for the purposes of doing or assisting in doing anything to be done by the Uniform Network Code Committee; and the Uniform Network Code Committee may by panel majority decide that a Sub-committee (other than the Performance Assurance Committee) shall cease to be established.

Amend paragraph 4.4.2 to read as follows:

4.4.2 Without prejudice to any requirement under the Code for a Transporter to consult with the Uniform Network Code Committee or any Sub-committee in respect of any matter, no Party may be required to provide to the Uniform Network Code Committee or any Sub-committee any information which such person is not willing so to provide (other than information of the type specified in the Performance Assurance Framework Document where such information is requested by the Performance Assurance Committee subject to and in accordance with the requirements of the Performance Assurance Framework Document).

Commented [Dentons5]: Suggest all reporting rules move out of Code and into the PAFD and therefore subject to PAFD governance.