

# UNC Workgroup 0506 0506A Minutes Gas Performance Assurance Framework and Governance Arrangements

**10.30 Tuesday 14 July 2015**

**at Energy UK, Charles House, 5-11 Regent Street, London SW1Y 4LR**

## Attendees

Bob Fletcher (Chair)	(BF)	Joint Office
Mike Berrisford (Secretary)	(MB)	Joint Office
Andy Clasper	(AC)	National Grid Distribution
Angela Love	(AL)	ScottishPower
Colette Baldwin	(CB)	E.ON
David Mitchell	(DM)	Scotia Gas Networks
Edward Hunter	(EH)	RWE npower
Emma Lyndon	(EL)	Xoserve
Jon Dixon	(JD)	Ofgem
Lorna Lewin	(LL)	DONG Energy
Mark Jones	(MJ)	SSE
Rachel Hinsley	(RH)	Xoserve
Richard Pomroy	(RP)	Wales & West Utilities
Steve Mulliganie	(SM)	Gazprom

\* via teleconference

Copies of all papers are available at: <http://www.gasgovernance.co.uk/0506/140715>

The Workgroup Report is due to be presented at the UNC Modification Panel by 20 August 2015.

## 1.0 Review of Minutes and Actions

### 1.1. Minutes

The minutes of the previous meeting were approved.

### 1.2. Actions

**0506 1101:** Xoserve (EL) to investigate the areas of concern with regards to manual workarounds.

**Update:** Transferred to main PAF Workgroup for further development. **Closed**

**0506 0504:** *Reference the Options paper discussion document on contracting model* - ScottishPower (AL) to look to canvas Shipper views on the most suitable option for the contracting model.

**Update:** AL advised that this matter had been raised at Energy UK meeting and further discussion is expected at next weeks meeting and an update will be provided in due course. **Carried Forward**

**0506 0601:** SSE (MJ), Xoserve (AM) and ScottishPower (AL) to liaise offline and prepare a one page 'up front' clarification summary document (identifying the various supporting documentation interactions) for inclusion in the Workgroup Report solution section.

**Update:** When AL challenged the existence of this action, BF pointed out that at the June meeting, AM had suggested that it would be beneficial if an "up front"

clarification summary document' was included within the Workgroup Report to provide clarity for the reader, hence the action. **Carried Forward**

## **2.0 Consideration of Modifications 0506 and 0506A**

### **2.1. Consider Amended Modification(s)**

#### **2.1.1. Modification 0506**

AL provided a brief overview of the latest round of changes to 0506 (v4.0 dated 18 June 2015), focusing attention on the changes made to the 'solution' in both Sections 1 and 3, which now better 'tie in' with the respective elements of Modification 0506A.

RP suggested that the legal text should be written in such a way as to allow the incentive regime to develop over time, especially as currently UNC GTB paragraph 4.4 clearly states that there are 'No powers for committees to bind', and as a consequence, a new modification would be required in order to actually implement this aspect of a new performance regime. RP then suggested that there is potential benefit in making sure that additional clarity is provided around this point. Responding, AL agreed to consider amending the modification.

When asked, AL confirmed that in respect of appointment of the PAFA, there is no specific timeline at this time as it is anticipated that contractual aspects would become clearer in due course. She also confirmed that as part of the development of the regime, the Workgroup has considered how the procurement mechanisms would work. BF pointed out that discussions at the June UNCC had also considered how it might be possible to utilise a 'expert' to assist in any procurement processes as required for the implementation of Modification 0473. SM suggested that the matter would / could also be discussed at the forthcoming July UNCC meeting, and that in principle, he has no issues with Xoserve being involved.

RP pointed out to everyone that should Xoserve be prevented from procuring the service, it becomes a User Pays related issue and the Workgroup would then need to consider suitable funding arrangements. He went on to add, that should the Workgroup wish to change the approach, then the Transporters would need to go away and consider the funding aspects in more detail, which could potentially lead to delay. When asked, EL confirmed that Xoserve are keen to not be excluded.

When prompted, JD provided a brief explanation of how the Baringa procurement exercise was undertaken and highlighted why this was different to this initiative and was not a good model to use. SM suggested that rather than arguing about funding, the crux of the matter simply boils down to whether or not the Workgroup has an issue with Xoserve being involved in the procurement process. AL felt that she had already 'covered off' this matter within the modification, but indicated that she would double check after the meeting.

When it was suggested that it could follow a similar approach to that undertaken in the FGO scenario, RP pointed out that the real issue boils down to who procures the service and the impact that this has on the potential funding aspects and if User Pays (UP) can be used – in an ideal world the Transporters would prefer for Xoserve to procure the service. SM went on to enquire whether, based on the fact that the modification does not obstruct Xoserve from procuring and tendering, is the Workgroup worried about this, on the grounds that Xoserve would be able to come up with a 'Chinese Wall' style of approach anyway !.

In response to a request from AL, BF added additional wording and clarity (extracted from the 0513 UP table) in the UP table onscreen. RP

challenged what is meant by the word 'assignment' in this new additional wording, as he believes that in legal parlance terms 'assignment' has a certain perceived meaning, and the example use in Modification 0513 was to give an assignment or project to a service provider. The Workgroup agreed that a further statement commencing '*for the avoidance of doubt, assignment means.....*' should also be added for additional clarity.

It was noted that a pre Project Nexus implementation could / would have potentially significant system related impacts.

**New Action 0701: ScottishPower (AL) to consider formally amending 0506 to better reflect Workgroup discussions and suggestions.**

#### **2.1.2. Modification 0506A**

In providing a brief update on the latest version of the modification (v3.0 dated 24 June 2015), MJ explained that very little had changed over and above the amendments discussed at the previous meeting.

### **2.2. Consider Associated Documents**

In light of discussions under item 2.0 above and 3.4 below, further consideration was deferred.

## **3.0 Development of Workgroup Report**

### **3.1. Consideration of Business Rules**

In light of discussions under item 2.0 above and 3.4 below, further consideration was deferred.

### **3.2. Consideration of User Pays**

In light of discussions under item 2.0 above and 3.4 below, further consideration was deferred.

### **3.3. Consideration of Relevant Objectives**

In light of discussions under item 2.0 above and 3.4 below, further consideration was deferred.

### **3.4. Consideration of Legal Text**

#### **3.4.1. 0506 draft Legal Text Review**

In providing an overview of the (draft) legal text, RP explained that this had been developed in conjunction with AL and that no supporting commentary has been developed at this time.

It was suggested that the wording for the proposed amendment to TPD Section V6.5.2(e) would need to change following earlier discussions at this meeting.

In pointing out the footnote associated with paragraph 16.1.1(a)(i), RP asked whether or not the Workgroup believe the statement would work to which SM suggested that it might be better to subtly amend the definition itself to highlight what is excluded rather than included. SM also felt that this matter does also raise some interesting points around everything downstream of NTS being deemed as 'in scope' and where this potentially leaves injection points.

In focusing on paragraph 16.1.1(b) RP indicated that he would need to double check the definition of 'Users'. When asked, RP also confirmed that as written this definition excludes the iGTs and furthermore, should the Workgroup feel a need to include the iGTs within the definition it would require a new UNC modification to be raised. When it was pointed out that the iGTs had been included within the definition for User within UNC Modification 0440, RP agreed to double check with his legal colleagues.

CB pointed out that as the industry is going to be reliant on the iGTs providing information in future, the Workgroup should make sure that this framework caters for them.

In referencing UNC Modification 0440's new iGT documentation provisions, JD suggested that care would be needed in developing the appropriate legal text should the Workgroup believe the regime would take effect prior to the Project Nexus Implementation Date. Responding, RP recognised that should a pre Project Nexus implementation be considered, then both transitional and enduring text would be needed. Regardless, RP believes it is a fundamental requirement that the legal text clearly defines whether this regime goes live pre / on / or post the Project Nexus Implementation Date.

Whilst it was suggested that the Workgroup simply needs a view of the potential impacts associated with a pre Project Nexus implementation date (i.e. when the procurement and tendering process 'kicks in'), it was also noted that should implementation of the regime be prior to the PNID, then it would be up to the UNCC to indicate the actual effective date – in essence it is simply a matter of establishing which parties are 'in scope' and at what point in time.

**New Action 0702: Wales & West Utilities (RP) to seek additional clarity around whether or not the definition for a 'User' or 'Users' includes the iGTs or not and clarify which parties are 'in scope' and at what point in time.**

Moving on to review paragraph 16.3.2, RP pointed out that whilst the modification makes reference to 'reasonable endeavours' his lawyers have interpreted this subtly differently and therefore make use of the term 'reasonably practicable' instead – it was felt that this was a reasonable change.

SM suggested that it might be possible to tweak the AUGE process to also serve us for the PAFA process.

In examining paragraph 16.3.4, RP advised that A Miller had questioned why this provision is needed, as it is / was not present in the equivalent AUGE process. RP defended its inclusion by pointing out that it is included as a mechanism to offset Transporter's risk exposure (i.e. carve out aspects), as currently Code does not 'cover' liability pass back issues as it is very limited in its scope. Some parties felt that the use of the term 'gross negligence' is / was a little unnecessary as it appears to provide a strong defensive position for Transporters. BF suggested that the matter boils down to what risk Transporters are seeking to protect themselves from.

Responding, RP provided a brief explanation of the rationale behind the Transporters thinking on this matter and pointed out it is seeking to protect the Transporters from entering into a contract that places liabilities on them which they are powerless to avoid or mitigate - it was suggested that the current wording needs to be amended, in order to provide better clarity and transparency around this matter. It was also then suggested that the use of the reference to 'the Transporters' Agency' incorrectly pre-supposes it is Xoserve who are involved. When asked why it is felt (by Transporters) that this is needed, RP explained that it is in essence to reflect the fact that it is a UP service applied to Shippers with potentially significant cost implications on Xoserve.

Moving on to look at paragraph 16.5, RP made reference to the comment within the text which states:

*"The Contract (Rights of Third Parties) mechanism has been chosen instead of an indemnity arrangement because the cap on shippers' liability under indemnities given to the transporters under the UNC would result in potential exposure for the transporters if transporters were to indemnify the PAFA against negligence claims by shippers."*

RP pointed out that their lawyers recommend that the contract with the PAFA contains an acknowledgement by the PAFA that the rights in its favour under this paragraph 16.5 may be amended pursuant to the UNC Modification Rules.

When asked whether this could / would impose additional risk exposure on Shippers, RP suggested that as the PAFA acts as a 3<sup>rd</sup> party to the Shippers, this seeks to include a 'waive your rights' aspect.

On a point of general interest, SM enquired whether or not the Workgroup perceive this regime as costing industry a great deal of money. Responding, CB indicated that this is not necessarily so, as the main focus is on the provision of reports that identify industry parties performance, and as such, should not cost a significant amount of money to introduce. In short, it is not in the same league as the AUGÉ (industry related) costs.

### **3.4.2. 0506A draft Legal Text Review**

In providing an overview of the (draft) legal text, RP explained that whilst this new legal text would be going into the Transition Document Part IIC as it is of a limited life expectancy, it will require renumbering as there is already a paragraph 18 in existence. He also advised that in line with discussions on the 0506 legal text at this meeting, parts of this text would also need subsequent amendments.

RP then went on to explain that paragraph 18.1.1 would be changing in the next iteration of the text. It was suggested that it might be better if the date in paragraph 18.1.2 was changed to read as '30 September' so that it ensures that any provisions are in place for the start of the Gas Year.

When asked about where it specifies being 'ceased', RP explained that it is specified within the modification as 3 years (to reflect the fact that 0506A is a time bound provision) and should we wish to change this date, a new modification (possibly self-governance) would be required. MJ added that the rationale behind the 3 year aspect, is to allow sufficient time to assess whether or not this (Xoserve) based solution is viable. BF pointed out that having a (3 year) expiry date avoids having a service provision that does not change until the actual service is changed.

When asked about the potential cost to Shippers, MJ advised that this is currently anticipated to be the indicated costs + 6% and are limited to the cost of establishing the regime. A high level view on the range of costs is expected in due course in the form of a Rough Order of Magnitude (ROM). SM suggested that it would be beneficial to have a view on the 'range' of costs involved before parties are asked to make a decision on the modification.

Whilst it was noted that no new invoicing arrangements would be needed to support implementation of 0506A, it was suggested that additional clarity around the charging aspects associated to 0506A would be beneficial.

RP advised that the scope comments for 0506 would also apply to paragraph 18.1.3.

### **3.4.3. Energy Settlement Performance Assurance Regime Guidelines document**

In briefly reviewing the Energy Settlement Performance Assurance Regime Guidelines (ESPAR) document, RP focused attention on paragraph 3.3 – Objectives and enquired whether the Workgroup is clear about what the Performance Assurance Committee (PAC), can or may do, in future. Responding, AL felt that the final bullet point was not quite correct and suggested that it might be better to expand the statement. SM wondered whether in light of bullet point 2, this bullet could be removed. AL suggested

that the final bullet relates more to how the regime is administered and as a consequence has merit of its own. BF then provided a brief explanation of how the current DESC processes operate and suggested that the PAC could operate in a similar manner at which point CB suggested that perhaps the last bullet should be amended to clearly state '.....by other modifications'. BF undertook some onscreen changes to better reflect discussions.

In closing, RP reminded everyone that currently Code defines Committees as not being able to obligate parties.

When asked, the Workgroup was happy to defer consideration of the other supporting documents on the grounds that they had not changed since the previous meeting.

When asked what the intention is in regards to implementation of the Ancillary Documents, MJ and EL explained that the intention is to implement these alongside the modification rather than as appendices within the modifications themselves. BF suggested, and the Workgroup agreed, that it would be beneficial to consolidate the various ancillary documents into two sets, one for 0506 and the other for 0506A.

In looking to conclude the meeting, BF advised that in order to complete the Workgroup Report for submission to the August Panel (by no later than 07 August), the following items would be needed in time for consideration at the 04 August Workgroup meeting:

- Amended modifications;
- Final legal text;
- The one page summary document (as per action 0506 0601);
- Collated supporting (ancillary) documents;
- High level cost estimates, and
- Approval of the relevant objectives.

BF also suggested that the Workgroup would need to consider whether there were any questions they would like the Panel to request as part of the consultation, and how long the consultation window should be.

#### 4.0 AOB

None.

#### 5.0 Diary Planning

Further details of planned meetings are available at: [www.gasgovernance.co.uk/Diary](http://www.gasgovernance.co.uk/Diary)

Workgroup meetings are scheduled to take place as follows:

Time/Date	Venue	Workgroup Programme
10:30 Tuesday 04 August 2015	<i>to be confirmed</i>	Standard Workgroup agenda plus: Consideration of amended modification Consideration of Business Rules and Legal Text Development/Completion of Workgroup Report
10:30 Tuesday 25 August 2015	Elaxon ( <i>Orange Room - Note: Maximum capacity 30 persons</i> )	<i>To be confirmed.</i>

**Action Table**

<b>Action Ref</b>	<b>Meeting Date</b>	<b>Minute Ref</b>	<b>Action</b>	<b>Owner</b>	<b>Status Update</b>
0506 1101	26/11/14	2.0	EL to investigate the areas of concern with regards to manual workarounds, specifically resolution of outstanding item 2.10 in the 'Pre-Nexus Xoserve settlement intervention activities.	Xoserve (EL)	<b>Transferred to main PAF WG.</b> <b>Closed</b>
0506 0504	05/05/15	2.2	<i>Reference the Options paper discussion document on contracting model</i> - ScottishPower (AL) to look to canvas Shipper views on the most suitable option for the contracting model.	ScottishPower (AL)	<b>Carried Forward</b>
0506 0601	16/06/15	4.2	To liaise offline and prepare a one page 'up front' clarification summary document (identifying the various supporting documentation interactions) for inclusion in the Workgroup Report solution section.	SSE (MJ), Xoserve (AM) & ScottishPower (AL)	<b>Carried Forward</b>
0506 0701	14/07/15	2.1.1	To consider formally amending 0506 to better reflect Workgroup discussions and suggestions.	ScottishPower (AL)	<b>Pending</b>
0506 0702	14/07/15	3.4.1	To seek additional clarity around whether or not the definition for a 'User' or 'Users' includes the iGTs or not and clarify which parties are 'in scope' and at what point in time.	Wales & West Utilities (RP)	<b>Pending</b>