

Legal Text

Transportation Principal Document Section V

Amend paragraph V5 (confidentiality) by deleting the word “or” at the end of paragraph V5.5.3(i), deleting the full stop at the end of paragraph V5.5.3(j) and replacing it with “; or”, and inserting the following new paragraph 5.5.3(k):

- (k) to the Performance Assurance Framework Administrator, provided the terms of the relevant PAFA Contract require the Performance Assurance Framework Administrator to maintain the confidentiality of such information on terms no less onerous than those of this paragraph 5, save to the extent disclosure of such information is necessary to comply with the terms of the PAFA Contract.

Amend paragraph V6 by renumbering paragraphs 6.5.2(e) and (f) as paragraphs 6.5.2(f) and (g) respectively and inserting, immediately before the renumbered paragraph 6.5.2(f), the following new paragraph 6.5.2(e):

- (e) the performance of the Transporters’ functions in relation to the engagement of the PAFA under paragraph V16.

Insert a new paragraph 16 as follows:

16 PERFORMANCE ASSURANCE

16.1 Interpretation

16.1.1 For the purposes of the Code:

- (a) **“LDZ Settlement Related Obligations”** means obligations under the Code, including obligations undertaken by the Transporter Agency on behalf of the Transporters, 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 Zones⁴;
 - (ii) the quantities of gas treated as delivered at LDZ System Entry Points; or
 - (iii) reconciliations and adjustments in respect of gas offtaken from Local Distribution Zones and/or delivered to LDZ System Entry Points.;

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;
- (b) **“Performance Assurance Scheme”** means a scheme for monitoring and reporting on the performance by Shipper Users, DNOs and, on behalf of the DNOs, the Transporter Agency of LDZ Settlement Related Obligations;
- (c) **“Performance Assurance Framework Administrator”** or **“PAFA”** means the person from time to time appointed and engaged to act as such pursuant to paragraph 16.3; and
- (d) **“Performance Assurance Framework Document”** or **“PAF Document”** means the document entitled “Guidelines for Energy

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⁴ ~~It is assumed that following implementation of Nexus Mod 440 obligations relevant to determining the amount of gas offtaken at CSEP Supply Points will also be relevant to determining the amount offtaken from an LDZ. I don't see any problem with the Framework Document, in anticipation of Mod 440 coming into effect, identifying IGT related obligations once these fall within the scope of the UNC, to the extent that these obligations are on DNOs or Shipper Users.~~

Settlement Performance Assurance Regime” ~~published by the Transporters adopted by the UNC Committee for the purposes of this paragraph 16 by majority resolution², as such document is amended from time to time pursuant to paragraph V12, setting out:~~

- (i) the scope of the Performance Assurance Scheme, including requirements with respect to the establishment and maintenance of a register of risks associated with LDZ Settlement Related Obligations, and a registry of reports on the ~~Transporter Agency’s standards of performance of and~~ DNOs’ ~~(including those of the Transporter Agency on their behalf)~~ and Shipper Users’ collectively and individually ~~standards of performance (in both cases)~~ with respect to specific LDZ Settlement Related Obligations;
 - (ii) the basis for appointment and engagement of the Performance Assurance Framework Administrator, including the following:
 - (1) the procedure for appointment of the PAFA;
 - (2) the qualifications and competencies required of any person to be appointed as the PAFA;
 - (3) the criteria for selection of a person to act as PAFA;
 - (4) terms of appointment of the PAFA, including with respect to the duration of the appointment of the PAFA, the scope of services to be provided by the PAFA and the basis on which such appointment may be extended in terms of duration and/or scope;
 - (6) requirements as to re-tendering the appointment of the PAFA from time to time,
 - (iii) any other matters (consistent with paragraph 16.1.1(d)(i) the Performance Assurance Committee decides and the Transporters agree should be included.
- (e) **"PAFA Contract"** means the contract of engagement of a person as PAFA as provided in paragraph 16.3.1;
- (f) subject to paragraph 16.2.1, the **"Performance Assurance Committee"** or **"PAC"** is the Uniform Network Code Committee or any relevant sub-committee.

16.1.2 In the event of any inconsistency between the provisions of this paragraph 16 and the terms of the PAF Document ~~or any terms of reference for the PAC,~~ the terms of this paragraph 16 shall prevail.

16.2 Performance Assurance Committee

16.2.1 Where paragraph 12, this paragraph 16 or the PAF Document provides for any decision to be taken by the PAC such decision shall be taken by the affirmative vote of a simple majority of the members of the committee who are appointed to represent DNOs and ~~Shipper~~ Users (and subject to such other procedures as the committee may establish) and the representatives of National Grid NTS who are members of the UNC Committee or any relevant sub-committee will not vote on any such matter.

16.2.2 The PAC shall have the functions set out in this paragraph 16 and the PAF Document ~~and shall conduct itself in accordance with such terms of reference as may be adopted by the UNC Committee.~~

² ~~Normally the Transporters’ adopt Network Code Documents but the Proposal indicates that the document should be the document annexed to the Final Modification Report. It is understood that this document is not being prepared by the transporters. Indeed the draft Guidelines state that they are “Prepared and maintained by the UNCC”. As the UNC Committee has the ability to change the PA Framework anyway it is suggested that the UNC Committee should be responsible for its initial adoption. It is anticipated that the first UNC Committee meeting after modification proposal implementation would be used to adopt the PAF Document and establish the Performance Assurance Committee. If necessary to avoid delays this could be done in contemplation of the relevant provisions coming into force on implementation of Mod 506.~~

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16.3 Appointment of PAFA

- 16.3.1 A person shall be appointed by the Transporters, in accordance with this paragraph 16.3, for the purposes of conducting the functions ascribed to the PAFA by the PAF 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 DNO's and [Shipper](#) Users' levels of performance of specific LDZ Settlement Related Obligations.
- 16.3.2 The Transporters shall, subject to and in accordance with the PAF 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;
 - (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 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 thereunder and in so far as reasonably practicable to act equitably as between Shipper Users, Transporters and the Transporter Agency 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 of the appointment of the PAFA; and
 - (f) perform the Transporters' obligations and exercise the Transporters' rights under the PAFA Contract.
- 16.3.3 Without prejudice to the requirements of the PAF Document, the Transporters may seek guidance or direction ~~ef~~[from](#) the PAC in relation to anything they propose to do or any other matter arising in connection with their activities under paragraph 16.3.2, and may act in accordance with such guidance or direction.
- 16.3.4 Nothing in this paragraph 16 shall require the Transporters to enter into a PAFA Contract where in the Transporters' reasonable opinion:
- (a) it would be unlawful to do so; or
 - (b) the contract could give rise to the Transporters (or the Transporters' Agency) incurring any liability, other than in respect of their or its own wilful misconduct, gross negligence or fraud, which the Transporters are not entitled to recover from Shipper Users pursuant to paragraph 16.4.4.
- 16.3.5 This paragraph 16.3 shall apply where the PAC requires the PAFA to be appointed by the Transporters or, on expiry or termination of a PAFA Contract, replaced.

16.4 Terms of engagement of PAFA and cost recovery

- 16.4.1 The Transporters 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.

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- 16.4.2 For the avoidance of doubt, the Transporters shall not be the agent or trustee of any User for the purposes of the PAFA, and the Transporters shall owe no duties or responsibilities to any User in respect of the PAFA Contract other than as provided in this paragraph 16.
- 16.4.3 The Transporters 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.
- 16.4.4 The functions of the Transporters under this paragraph 16 (including tendering for and engaging the PAFA) are User Pays Services and all amounts payable to the PAFA and any other costs, expenses and liabilities incurred under the PAFA Contract are recoverable as User Pays Charges.

~~16.5 — Waiver and Release in Favour of PAFA~~

~~16.5.1 Pursuant to the Contract (Rights of Third Parties) Act 1999, for the benefit of each person appointed as Performance Assurance Framework Administrator from time to time, each Shipper User:~~

~~(a) — waives any rights or remedies; and~~

~~(b) — releases such person from any duties or liabilities;~~

~~arising in tort or misrepresentation in respect of the subject matter of the relevant PAFA Contract.~~