

## UNC Panel Voting – For discussion

At August's Panel meeting, a question was asked about whether it was necessary, for Draft Modification Reports going out to consultation, to explicitly vote on every occasion not to request further Legal Text (LT) or a Cost Estimate (CE). This short note highlights the relevant sections of the Modification Rules (MR) and invites Panel to decide how it wants to proceed.

As a general point, the MR pre-date the CACoP, which expects that both LT and CE are available for the Consultation stage, such that respondents can make an informed decision. This would appear to cut across the MR, which were written at a time when it was possible to proceed to consultation without these items.

In addition to the references below, the MR 9.6 (overleaf) describes how the LT itself should be handled. It is not believed to be material to the considerations in this note.

### Legal Text

The MR 7.3.1 (below) describe that the "proceed to Consultation" request (vote) deems a request for Legal Text, hence why this is countered by the 'no further text' vote.

#### 7.3 Modification Proposal to proceed to Consultation

- 7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(b)(i) that a Modification Proposal should proceed to Consultation:
- (a) the Modification Panel shall be deemed to have requested that the Transporters provide legal text unless the Modification Panel determines that legal text is not required for the purposes of the Modification Report (which may be the case where Suggested Text has been provided by the Proposer and is sufficient in the view of the Modification Panel);

Ideally the MR should be amended to bring them in to line with the CACoP, however this is inappropriate whilst there is a modification pending to address the CGR3 (SCR and self-governance) requirements.

### Cost Estimate

The MR 7.2.5 (below) appear to be less specific and may be interpreted as "a CE should be requested when Panel believe one is necessary" – i.e. when there are costs indicated but no estimate of them provided in the report.

- 7.2.5 Where the Modification Panel considers that a more detailed analysis and cost estimate is required in respect of a Modification Proposal it may:
- (a) determine that the Transporters prepare and submit to the Modification Panel (within a period determined by it) such an analysis and estimate; and
  - (b) where its Workgroup Assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(b)(i).

The MR would benefit from alignment with the CACoP as for LT.

### Recommendation

Panel is asked to consider, in light of there being very few occasions of reports being held up pending the provision of LT and CE, whether it is efficient to continue to request same on every occasion.

The JO recommends that

- Panel directs that, providing (i) the LT is confirmed as Final LT by the relevant transporter, *and* (ii) the CE (where costs exist) has been considered by the workgroup, the default position is "not required" for these votes (though they would be included by exception when the JO believe it is appropriate).
- This has the effect of making the vote "Should Modification 0xxx be issued to Consultation?" a confirmation by Panel Members that the provided LT and CE are suitable for that Consultation.
- The Modification Rules should be updated at the earliest opportunity to bring the explicit requirements in to line with the practice directed herein and CACoP.

## **9.6 Legal Text for Modification**

- 9.6.1 Subject to paragraph 9.6.6, in relation to each Modification Proposal, the Transporters shall prepare the legal text of the Modification:
- (a) where requested by the Modification Panel by way of Panel Majority vote at any time prior to a determination under paragraph 9.3.3(a) or paragraph 9.3.10(a) or where directed by the Modification Panel, for inclusion in the draft Modification Report prepared pursuant to paragraph 9.1.1 (unless the Modification Panel has determined that legal text is not required pursuant to paragraph 7.3.1(a) or 9.1.3); or
  - (b) if requested or directed to do so by the Authority:
- in the case of paragraph (a) the Transporters shall provide the legal text within 15 Business Days of such request unless the Transporters confirm at that meeting of the Modification Panel that existing legal text provided is suitable for inclusion in the draft Modification Report.
- 9.6.2 Subject to paragraph 10, the Suggested Text and/or any legal text provided by the Transporters pursuant to paragraph 9.6.1 prior to a determination under 7.3.1 of each Modification shall be considered by the relevant Workgroup to which such Modification Proposal has been referred in accordance with these Rules. If the Suggested Text and/or any legal text provided by the Transporters pursuant to paragraph 9.6.1 prior to a determination under 7.3.1 of a Modification is not considered by a Workgroup prior to that Workgroup's report being discussed by the Modification Panel pursuant to paragraph 8.5.1, the Workgroup shall, where requested by the Modification Panel, having considered the legal text of a Modification and prior to the preparation of the draft Modification Report pursuant to paragraph 9.1.1, prepare a supplemental report commenting as appropriate on the legal text.
- 9.6.3 If it is considered that the Modification Proposal is not sufficiently clear or complete to enable the preparation of the legal text, a written report setting out the reasons for this will be prepared by the Code Administrator and the Code Administrator shall refer the Modification Proposal to the next Modification Panel for determination pursuant to paragraph 9.1.3.
- 9.6.4 Where the Modification Proposal is a User Pays Modification Proposal, the request or direction pursuant to paragraph 9.6.1(a) or (b) will be deemed to be a request for legal text in respect of a proposed amendment to the Agency Charging Statement and such legal text will be prepared at the same time the legal text prepared pursuant to paragraph 9.6.1(a) or (b).
- 9.6.5 At any time following a request for legal text pursuant to paragraph 9.6.1(a) and prior to a determination under paragraph 9.3.3(a) or paragraph 9.3.10(a) the Transporters may provide revised legal text in relation to a Modification Proposal and such legal text shall replace all earlier versions of legal text provided by the Transporters.
- 9.6.6 The provision of legal text pursuant to these Rules shall have regard to the Legal Text Guidance Document which may be amended only by a determination of the Modification Panel in accordance with paragraph 5.1.2(a).