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Guidelines for the Provision of Legal Text in Support of Uniform Network Code Modifications

Outline

This document sets out proposed guidelines that would be used by Code Parties when producing legal text as required by the UNC modification process.

Version 0.1

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The I&C Shipper & Suppliers - ICoSS

The Industrial and Commercial Shippers and Suppliers (ICoSS) group represents all the major non-domestic industrial and commercial (I&C) suppliers in the GB energy market, supplying in excess of 65% of the gas needs of the I&C sector; a number of our members also supply electricity to their customers¹.

¹ Current Membership: Corona Energy, ENI, First Utility (associate), Gazprom Energy, GDF Suez Energy UK, Statoil UK, Total Gas & Power, Wingas UK.

Introduction

Uniform Network Code (UNC) modifications are ultimately defined by the legal text that supports them. The development of the legal text is therefore critical to any modification and this guidance document provides a framework for the preparation of legal text. This framework seeks to set out best practice, providing transparency to the existing process, clarity to parties involved in the process and consistent expectations. The Guidelines have been written to be consistent with the requirements of both the UNC and the Code Administration Code of Practice.

Principle 9 of the Code Administration Code of Practice is that “Legal text will be produced and consulted upon prior to a Modification being recommended for approval” The Code of Practice sets out that:

“To allow users to fully understand and assess the impact of a Modification, the default position will be that legal drafting will always be developed in time to allow for consultation. To achieve this principle:

- The Code Administrators will seek to ensure legal text is produced in time to be issued for consultation;
- Code panels may, by exception, agree that legal text may not be produced in certain circumstances, including where the proposer has produced suggested text as part of the Modification;
- Code panels can agree to minor corrections to legal text at the time of making its final recommendation;
- If the panel determines that changes to the legal text are appropriate, but considers that they cannot reasonably be considered to be minor, they may instruct the CA to carry out a further consultation on that revised text;
- Code Administrators will seek to ensure that legal text is produced in a consistent style and that the legal text accurately implements the intent of the Modification.”

The UNC Modification Rules provide that the Transporters are responsible for the provision of legal text in support of all modifications. Proposers are free to provide Suggested Text as part of any modification proposal, but the Transporters remain responsible for the text and, while expected to take any Suggested Text into account, may choose to adopt a different approach to that set out in any Suggested Text.

The Modification Rules provide for the Modification Panel to request that legal text is provided for a modification. Unless the Modification Panel specifies a different timescale, the Transporters are obliged to provide text within 15 business days of a request. If the Transporters consider the modification is not sufficiently clear or complete to enable the preparation of text, they are required to provide a written report setting out the reasons for this.

In addition, the Transporters are required to provide legal text for a modification when this is requested by the Authority.

Having provided legal text in response to a request, the Transporters may subsequently amend the text until the time at which the Modification Panel determines whether or not to recommend implementation of a modification, or whether or not to implement a self-governance modification. Subsequent to a final modification report being submitted to the Authority for a decision as to whether or not a modification should be implemented, any change to the text within the final modification report results in that report being referred back to the Modification Panel, and the Panel may determine that, given the change to the proposed legal text, further consultation should occur.

Legal Representative

The Transporters are to identify and secure the legal resources they consider are necessary to produce legal text in support of a modification.

The Transporters shall identify a named legal representative in respect of each modification.

The named legal representative for a modification should not normally be changed, although it is recognised that there may be rare circumstances in which it is appropriate for the legal representative to be changed.

The named legal representative for any alternative modification should be the same as for the original modification. In addition to formal alternatives, if modifications are closely related, the Transporters should seek to ensure that the same legal representative is appointed.

The legal representative's name and contact details are to be included in all Workgroup and Modification Reports.

The legal representative is to be the main point of contact for any issues concerning the legal text.

The legal representative may either produce the text themselves or be supported by others as necessary. However the legal representative is responsible for the timely delivery of text which would implement the Solution set out in the relevant Modification.

Development of Text

Subject to the modification proposer agreeing to incorporate suggested changes, Modification Workgroups are required to develop an unambiguous plain English Solution in a modification in sufficient detail to enable legal text to be prepared.

Workgroups may recommend to the Panel that legal text for a modification be requested.

At any point during the assessment of a modification, if there are any particular issues which the legal representative believes should be addressed in developing the Solution, these should be advised to the Code Administrator. The Code Administrator shall ensure that the Workgroup is made aware on any issues raised by the legal representative, and the Workgroup shall seek to address the issues raised in order to facilitate the subsequent production of legal text.

If the legal representative wishes to clarify any points in the Solution, contact should be made with the Proposer of the modification (i.e. the Proposer should be regarded as the client).

In support of the legal text provided, the legal representative shall provide an explanatory note setting out the approach taken to converting the Solution into legal text, highlighting any assumptions that were made and illustrating how the legal text delivers the intent of the Solution.

The Workgroup shall assess whether the legal text meets the intent of the Solution and advise the legal representative of any areas of the text that are believed to be unclear, in error, or otherwise inappropriate.

If requested by the Workgroup, the legal representative shall attend a Workgroup meeting at which the text is to be discussed, and shall present and explain the text that has been provided and discuss any issues that are raised by Workgroup attendees.

Irrespective of any Workgroup request, the legal representative may attend any Workgroup meeting in order to understand the modification and provide advice and guidance to the Workgroup regarding any areas that would benefit from amendment in order to support the production of legal text.

The Workgroup can request the legal representative attends meetings to provide guidance / advice

The Workgroup should satisfy itself that the legal text is expected to deliver the intent of the Solution, and the Workgroup Report to the Panel should confirm whether or not the Workgroup is satisfied in this respect.

Modification Panel

Prior to a modification being issued to consultation, Panel Members should satisfy themselves that the legal text has been scrutinised and, if implemented, can reasonably be expected to implement the Solution as contained in the Modification.

Modification Panel Members may request that the legal representative be available to advise Members regarding the legal text, and to present the text when requested to do so by the Modification Panel at meetings where the Modification concerned is on the agenda.

Any UNC party that has concerns regarding the quality or timeliness of legal text and supporting advice being provided by a legal representative (in respect of a particular modification) may make representations (to the Modification Panel) seeking agreement to an alternative legal representative being appointed for that modification.

If any representations are received that propose an alternative legal representative should be appointed, the Modification Panel shall consider those representatives and determine whether to request that the Transporters appoint an alternative legal representative.

If the Modification Panel determine to request that an alternative legal representative be appointed, the Transporters shall either inform the Code Administrator of the name of the alternative legal representative or provide a written explanation explaining why the Transporters have declined to agree to the Modification Panel's request.

Review

The process of Legal text production shall be subject to an annual review and report to panel to identify any improvements in the process which can reasonably be undertaken.