

Representation

Draft Modification Report

0484S - Guidance for the production of legal text

Consultation close out date: 19 May 2014
Respond to: enquiries@gasgovernance.co.uk
Organisation: National Grid Gas Transmission
Representative: Seán McGoldrick
Date of Representation: 19 May 2014

Do you support or oppose implementation?

We support in principle, with comments, the Modification Proposal. We have also included some suggested minor changes to the Legal Text which we feel reflect discussions carried out in the Modification Workgroup and clarify the purpose and application of the Legal Text Guidelines.

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

We believe that efficient and timely production of legal text is a key facilitator of an effective UNC Modification process. We are, therefore, satisfied that the introduction of clear and straightforward guidelines for the production of legal text will add value to the UNC Modification process. The proposed guidelines set out many of the activities which, although not documented in detail in the Modification Rules, are nevertheless common practice.

Our comment relates to the proposed annual review of the Guidelines. We consider that, in addition to offering Users the opportunity to suggest changes to the Guidelines, it would be useful to assess the efficacy of their application. We would suggest, therefore, that the Code Administrator produces and publishes legal text provision performance information based on the requirements of the Guidelines for consideration by the Modification Panel on an annual basis.

Are there any new or additional issues that you believe should be recorded in the Modification Report?

The legal status of the proposed guidelines has not been made expressly clear in the guidelines themselves. It is our understanding that the intention of the proposal is that the guidelines are not intended to be legally binding, are for guidance only and compliance with the guidelines is not mandatory under UNC or otherwise. It is also not clear about the consequences of material cases of non-compliance. Would such cases be expected to be brought to the Modification Panel for further discussion for example?

We also have some concerns that changes might be made to the guidelines through a Modification Panel decision which might then place them in conflict with the UNC Modification Rules which we

0484S
Representation

19 May 2014

Version 1.0

Page 1 of 3

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believe take precedence. We acknowledge that this is an issue present with similar documentation currently referenced within UNC and would not expect Modification Panel members to support changes which give rise to conflicts with the UNC.

Self Governance Statement:

Do you agree with the Modification Panel's decision that this should be a self-governance modification?

Yes

Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

Relevant Objective (f) Promotion of efficiency in the implementation and administration of the Code.

We agree that this Modification Proposal meets the requirements of this Relevant Objective insofar as it seeks to clarify the roles, responsibilities and timescales for parties involved in requesting and producing legal text.

Impacts and Costs:

What analysis, development and ongoing costs would you face if this modification were implemented?

No material cost identified at present.

Implementation:

What lead-time would you wish to see prior to this modification being implemented, and why?

N/A

Legal Text:

Are you satisfied that the legal text will deliver the intent of the modification?

No. We consider that the Legal Text Guidance Document is guidance only and, as such, not legally binding. We have discussed this at Workgroup and believe that consensus was achieved on this point. We, therefore, suggest amendment of the legal text as follows:

- (1) deletion of the words "Subject to paragraph 9.6.6 ..." at the beginning of para 9.6.1. The reason for this suggestion is that, as the Guidance is something which Transporters are to "have regard to" pursuant to para 9.6.6, we consider that there is no need for the "Subject to" wording (the obligation to "have regard" within 9.6.6 will suffice). In any event, the words "Subject to paragraph 9.6.6 ..." are not correct from a drafting perspective as it is not correct (and not the intention of the Mod) for 9.6.1 (the obligation to prepare legal text) to be subject to 9.6.6 since the effect would be that 9.6.1 would only come into effect if there were no conflict with 9.6.6.
- (2) amendment of para 9.6.6 to read:-

"In providing legal text pursuant to these Rules the Transporters shall have regard to".

In relation to the new definition of “Legal Text Guidance Document”, the associated commentary from SGN states that this is “inserted to establish the requirement on Transporters to publish a Legal Text Guidance Document”. This does not seem to have been included in the Modification Proposal.

Is there anything further you wish to be taken into account?

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.

No.