

CODE MODIFICATION PROPOSAL No xxxx
Code Governance Final Proposals Mod x: Significant Code Reviews
Version x.x

Date: 07/07/2010

Proposed Implementation Date:

Urgency: Non Urgent

1 The Modification Proposal

a) Nature and Purpose of this Proposal

Where capitalised words and phrases are used within this Modification Proposal, those words and phrases shall usually have the meaning given within the Uniform Network Code (unless they are otherwise defined in this Modification Proposal). Key UNC defined terms used in this Modification Proposal are highlighted by an asterisk (*) when first used.

This Modification Proposal*, as with all Modification Proposals, should be read in conjunction with the prevailing Uniform Network Code* (UNC).

Background

In November 2007, Ofgem announced the Review of Industry Code Governance, which concluded at the end of March 2010 when Ofgem published their Final Proposals for the Code Governance Review (CGR). The Final Proposals covered the following work strands:

- Significant Code Review and Self Governance proposals;
- Proposals on the governance of network charging methodologies;
- Proposed approach to environmental assessment within the code objectives;
- Proposals on the role of code administrators and small participant and consumer initiatives; and
- The Code Administration Code of Practice (subset of the above code administrators proposals).

The licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice were published on 3 June 2010 and become effective on the 31 December 2010.

This Modification Proposal* aims to implement the Code Governance Review Final Proposals with regards to the management of Modification Proposals raised during a Significant Codes Review (SCR).

The purpose of reviewing the SCR process within the CGR was to ensure that changes recommended as a result of an SCR can be facilitated quickly and effectively. The speed and efficiency of implementing SCR findings will be particularly important given the need for the industry to rise to the challenge of the Government's social and environmental energy goals and possible changes required as a result of European legislation.

The current UNC Modification Rules* allow for any Transporter*, User* or Third Party Participant* to raise a Modification Proposal at any time. The Code Governance Review considered whether the current process remained suitable or whether permitting SCR related Modification Proposals to be raised and pursued in parallel to an SCR causes undue confusion and inefficiency within the industry.

A brief overview of the key recommendations regarding a SCR and the UNC can be found below;

- Prior to the commencement of a SCR, Ofgem will signal at the earliest opportunity to the industry its intention to conduct a SCR. This notification will detail the start date of the SCR and the matters within the scope of the review.
- The period between the start of the SCR as stated by the Authority* and the issuing of a direction is deemed to be the SCR Phase.
- An SCR related proposal may be raised and pursued via the relevant code development process prior to the commencement of a SCR. However the Authority will not necessarily approve such proposals where they overlap with an imminent SCR, and nor will such Modification Proposals delay the commencement of an SCR.
- For the avoidance of doubt, if a proposal has been raised prior to an SCR and issued to the Authority for determination but is subsequently sent back into the code development process, that proposal will not be subject to the SCR.
- If during an SCR Phase an urgent proposal has been raised concerning the topic being covered within the SCR, only the Authority* can decide whether the proposal can proceed via the usual code development processes with decisions judged on a case-by-case basis.
- For any non-urgent proposals raised in relation to a SCR topic, the relevant code panel, with the assistance of the Code Administrator, should assess whether a proposal falls within a SCR.
- If the relevant code panel determines that the non-urgent proposal relates to an ongoing SCR then the code panel will provide this assessment in a written statement to the Authority and the code development process for the proposal will be temporarily suspended until the Authority has made a determination. If the Authority agree with a panel assessment that a non-urgent proposal relates to a commenced SCR then the proposal will

be subsumed by the SCR and the code development procedure for the particular Modification Proposal will continue to be suspended until the SCR is ended. Once the SCR is ended, the code development procedure for each suspended proposals will recommence with proposers able to withdraw their proposal if they deem that the proposal is no longer valid.

- If the Authority decides that a non-urgent proposal is not related to an ongoing SCR the proposal will continue as per the relevant code development process.
- An SCR phase will be deemed to have ended via the following methods;
 - (a) The date on which the Authority issues a statement deeming that no further action is required
 - (b) The date on which a licensee has, following a direction from the Authority, raised a proposal containing the recommendations of the SCR, or
 - (c) 28 (twenty-eight) days from the Authority's publication of its SCR conclusions
- If the SCR is ended via method (b) above, the proposal raised by the licensee and containing conclusions of the SCR will then pursue the relevant code development procedures and may only be withdrawn upon agreement of the Authority.
- Finally, once the SCR has ended via one of the above methods the 'barring' of raising proposals in relation to the relevant SCR will be lifted. Specifically, relevant parties will be able to raise alternate proposals if they believe improvements can be made to the original SCR proposal raised as per method (b) above.

Nature

To implement the above recommendations from the Code Governance Review Final Proposals into the UNC it is proposed that the UNC Modification Rules be amended to reflect the required amendments to the assessment and progression of Modification Proposals during a SCR.

Preventing a SCR related non-urgent Modification Proposal being raised during an associated SCR period

Section 6.1 'Relevant Persons' within the UNC Modification Rules describes the parties that can raise a Modification Proposal from time to time. To implement the Code Governance Review Final Proposals it is proposed that this section be amended to state that 'Relevant Persons' may not raise a non-urgent Modification Proposal to amend either the UNC or an Individual Network Code if the Modification Proposal relates to a topic already under analysis via a commenced SCR.

Section 7.2 'Discussion of Modification Proposals' within the UNC

Modification Rules states the discussion of a recently raised Modification Proposal by the Modification Panel to determine whether the Modification Proposal should be pursued via the review procedures, Development Phase or the Consultation Phase. It is proposed that this section [7.2.3 (a)] be amended to state that the Modification Panel will in the first instance assess whether a Modification Proposal relates to a commenced SCR.

Treatment of Modification Proposals determined as relating to a SCR

In addition to the above, it is proposed that section 7.2 is also amended to state that, should a Modification Proposal be raised during an SCR, the Modification Panel shall determine whether or not the Modification Proposal is related to a commenced SCR and shall submit a written assessment reflecting the determination and the Modification Proposal to the Authority.

It is also proposed that section 7.2 be amended to oblige the Secretary* to inform the proposer and other interested parties if they are notified that the Authority agree with the Modification Panel determination (as above) and the Modification Proposal shall be subsumed as part of the ongoing SCR and the proposal shall be suspended until the end of the SCR.

[Is the as-is process sufficient to deal with mods that have been ‘unfrozen’ following the end of an SCR?]

It is further proposed that should the Authority deem that the Modification Proposal does not relate to a commenced SCR, the Modification Panel will make a determination in line with the remainder of section 7.2 at the next meeting and the proposal will follow the ‘standard’ route.

Withdrawal or variation of SCR driven Modification Proposals’

Section 6.5 ‘Withdrawal or variation of Modification Proposals’ of the UNC Modification Rules states that the proposer of a Modification Proposal may withdraw a Modification Proposal at any time prior to the Modification Proposal being submitted to the Authority for determination. It is proposed that this section be amended to reflect that where a Gas Transporter has been directed to raise a Modification Proposal by the Authority following the completion of a SCR, withdrawal of this Modification Proposal is solely allowed upon further direction from, or agreement with the Authority.

The proposer believes that the current process for raising Urgent Modification Procedures satisfies the requirements identified as part of the Code Governance Review Final Proposals.

Further, the proposer believes 11.8 ‘View’ of the UNC Modification Rules provides the opportunity for the Transporters* to seek a view of the Authority on matters relating to possible SCR related Modification Proposals should clarity be required.

b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)

Not applicable.

c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.

The proposer believes that this Modification Proposal is sufficiently clear to proceed directly to consultation

2 User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

This Modification Proposal does not affect xoserve systems or procedures and therefore it is not affected by User Pays governance arrangements.

b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

Not applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

Not applicable.

d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

Not applicable.

3 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives

The proposal implements the changes to paragraph 15D, E, F of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence as provided below:

Self-governance

15D. The network code modification procedures shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 15D where:

- a. (i) in the view of the panel the modification proposal meets, all of the self governance criteria, and the panel has submitted to the Authority in respect of the modification proposal and not withdrawn a self-governance statement; or*

(ii) if a self-governance statement has not been made, or has been withdrawn, the Authority has determined that the self-governance criteria are satisfied and the modification proposal is suitable for the self-governance route; and

b. unless otherwise exempted by the Authority, the panel has sent copies of allm consultation responses to the Authority at least seven (7) days before the panel intends to make its determination under paragraph 15D(d); and

c. the Authority has not directed that the Authority's decision is required prior to the panel's determination under paragraph 15D(d); and

d. the panel has, no earlier than seven (7) days after sending the consultation responses referred to at paragraph 15D(b), determined, in accordance with paragraphs 9(d) to (f) and 15(a) of this condition as applicable, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the uniform network code and any other modifications proposed in accordance with paragraph 10(b), better facilitate the achievement of the applicable objective(s); and

e. (i) no appeal has been raised up to and including 15 days after the panel's determination under paragraph 15D(d) in respect of such modification proposal and any alternative in accordance with paragraph 15E; or

(ii) an appeal has been raised in respect of such a modification proposal and any alternative in accordance with paragraph 15E and the Authority has not quashed the panel's determination referred to at paragraph 15D(d) of this condition and either remitted the relevant modification proposal and any alternative back to the panel for reconsideration or taken the decision on the relevant modification proposal and any alternative itself following the appeal.

15E. The network code modification procedures shall provide that those persons set out at paragraph 10 may appeal to the Authority the approval or rejection by the panel of a modification proposal and any alternative falling under the self governance route, provided the appeal has been made up to and including 15 days after the approval or rejection and in accordance with the procedures specified in the uniform network code and, in the opinion of the Authority:

a. (i) the appealing party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of that modification or alternative proposal; or

(ii) the appeal is on the grounds that:

(1) in the case of implementation, the modification or alternative proposal may not better facilitate the achievement of at least one of the applicable BSC objectives; or

(2) in the case of non-implementation, the modification or alternative proposal may better facilitate the achievement of at least one of the applicable BSC objectives; and

b. it is not brought for reasons that are trivial, vexatious or have no

reasonable prospect of success.

15F. The network code modification procedures shall provide that:

a. where an appeal has been raised in respect of a modification proposal and any alternative in accordance with paragraph 15E that modification proposal and any alternative shall be treated in accordance with any decision and/or direction of the Authority following that appeal;

b. if the Authority quashes the panel's determination referred to at paragraph

15D(d) of this condition and takes the decision on the relevant modification proposal and any alternative itself following an appeal in accordance with paragraph 15E, the panel's determination of that modification proposal and any alternative referred to in paragraph 15D(d) of this condition shall be treated as a notice given to the Authority in accordance with the procedures specified in paragraph 15(a) of this condition and paragraph 15(b)(i) of this condition and the panel's determination shall be treated as its recommendation.

4 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation

Not applicable.

5 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:

a) The implications for operation of the System:

Not applicable.

b) The development and capital cost and operating cost implications:

Not applicable.

c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:

Not applicable.

d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

6 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)

Not applicable.

7 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

Not applicable.

8 The implications for Users of implementing the Modification Proposal, including:

a) The administrative and operational implications (including impact upon manual processes and procedures)

Not applicable.

b) The development and capital cost and operating cost implications

Not applicable.

c) The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

Not applicable.

9 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)

Not applicable.

10 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters

Implementation of the proposal would allow the new licence obligation effective on 31 December 2010 to be met.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 10 above

Advantages

Disadvantages

12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)

13 Detail of all other representations received and considered by the Proposer

14 Any other matter the Proposer considers needs to be addressed

15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

It is recommended that this be implemented the next working day after Authority decision.

16 Comments on Suggested Text

17 Suggested Text

Code Concerned, sections and paragraphs

UNC Modification Rules

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Nick Reeves, National Grid NTS

Proposer

National Grid NTS