

## Representation - Draft Modification Report 0550

### Project Nexus: Incentivising Central Project Delivery

**Responses invited by: 10 March 2016**

To: [enquiries@gasgovernance.co.uk](mailto:enquiries@gasgovernance.co.uk)

<b>Representative:</b>	Joanna Ferguson
<b>Organisation:</b>	Northern Gas Networks
<b>Date of Representation:</b>	10 March 2016
<b>Support or oppose implementation?</b>	Oppose
<b>Relevant Objective:</b>	<b>f) Promotion of efficiency in the implementation and administration of the Code</b>  Negative

**Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)**

The proposer believes that implementation of this Modification Proposal will incentivise Transporters to deliver the core Project Nexus suite of system changes on the current Project Nexus Go-Live date of 1 October 2016 over and above the current framework of incentives. NGN disagrees that this proposal will in any way further incentivise Transporters. As well as a best endeavours obligation to deliver Project Nexus under Modification 0548 and the risk of enforcement action under the GT licence, Transporters as funders of the central programme and their own individual system developments face strong commercial incentives for Project Nexus to deliver on time. However, even more importantly we must be confident that the central systems and sufficient market participants are ready for live market operation with no major issues. Pushing for any fixed date at the expense of a failed roll out is very clearly not in the customers' interest. The danger with this proposal is that it diverts people towards looking to establish who is to blame and possibly push towards more risk in the go-live decision.

Historically the Network Code has sought, with good reason, to contain liability to all parties rather than expand them in a one sided manner in what is a regulated contract. If liability is to be expanded then the normal principles where liability applies in situations of breach should be capable of being applied to all parties, this Modification Proposal makes no attempt to do that. The Network Code is not a unilateral arrangement – all parties are to some extent dependant on other parties to ensure performance, and this is particularly true in the case of this project. The Modification Proposal makes no attempt to recognise the need for all parties to play their part to ensure delivery and in seeking to apply liability to Transporters makes no acknowledgement of the consequential effect actions of other parties can have on the Transporters ability to perform, and hence whether they are exposed to liabilities. In this sense and given the ability of the regulator to take action, the proposal of this approach via this modification is wholly inequitable.

This is at the core of why it has been considered inappropriate for the UNC to contain liability to parties rather than expand it. It is this sort of modification that lends itself to the expansion of litigious action to try and attribute and defend claims between the parties by continual claim and counter claim.

The RIIO incentives, as referred to in the Workgroup Report, are balanced to ensure that they drive the most appropriate behaviours within networks for delivering outputs. Typically these include rewards and penalties, where there are penalty-only incentive mechanisms (as proposed here), they relate to the setting of a minimum acceptable standard of service (e.g. on complaint handling) by a Transporter of activities wholly within its control. Delivery of significant new industry IT systems and processes involving all industry parties do not fit this model and will not change the commercial and regulatory incentives.

Furthermore, the distribution of the penalty sum if triggered would be according to Supply Point market share and would not reflect the system costs faced by individual Shippers in developing readiness for Project Nexus, the reason the Modification proposal has been raised in the first place. The additional payment to an unnamed charity would fail to incentivise Transporters or recompense Shippers for their perceived losses due to a further delay. What is proposed is an arbitrary penalty payment to Shippers with an arbitrary charitable payment on top.

Shipper arguments that this amounts to a traditional service provider contract fail to take into account the very advanced stage industry parties are currently at with regards development and delivery. A traditional service provider contract would more normally be negotiated before the development process begins, not toward the end of the delivery phase. It would also seek to establish a framework for liabilities that would accrue to service receiver should a failure on their part cause additional costs for the service provider. A specific request from the Modification Panel found no party could provide a single example of a similar provision existing in other codes.

Much of the Workgroup discussion has focused on issues facing Shippers as a consequence of delays to Project Nexus delivery and the lack of incentives on Transporters to ensure timely delivery. This fails to acknowledge the system changes faced by individual Transporters to prepare for Project Nexus Go-Live. Delays to Project Nexus are not 'cost free' for Transporters as the underlying assumption of this proposal implies.

Nor does the proposal understand the reputational damage Transporters face should further delays to Project Nexus be required. Put simply, it is absolutely not the case that delays to Project Nexus are in any way 'risk free' for Transporters and we believe we are already sufficiently incentivised to ensure we are doing all we can to ensure timely implementation. The proposal is asymmetric in that there is no recognition of shipper actions or omissions in adding to the costs of transporters, this is not an incentive, it is a one sided penalty.

The proposal places specific obligations in the UNC on the Authority to be the arbiter of whether the penalties should apply were a case made for delay to the implementation date. As a licenced Transporter, we believe that the Authority has sufficient power to request information, intervene or apply penalties through existing arrangements without the addition of this arbitrary penalty. It is unusual to try to place such obligations on the Authority through this mechanism, as they are not a Party to the UNC. It is therefore

unclear to us how the Authority can be obligated to undertake the necessary assessment of a delayed date through this means.

All this proposal would achieve is an arbitrary penalty payment against parties that are already incentivised to manage the implementation of Project Nexus. This would set a negative precedent to the UNC and rather than have a positive impact on Relevant Objective f) 'Promotion of efficiency in the implementation and administration of the Code', we believe it will negatively impact it.

**Implementation:** *What lead-time do you wish to see prior to implementation and why?*

If the proposal is directed for implementation an appropriate lead-time would be required to allow the necessary changes to introduce the new charging.

**Impacts and Costs:** *What analysis, development and ongoing costs would you face?*

NGN believes that this proposal sets a precedent that arbitrary penalties can be placed on any UNC party in the future. This could undermine the confidence in the unbiased nature of the UNC as an industry code.

**Legal Text:** *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes.

**Are there any errors or omissions in this Modification Report that you think should be taken into account?** *Include details of any impacts/costs to your organisation that are directly related to this.*

N/A

**Please provide below any additional analysis or information to support your representation**

N/A