

UNC Workgroup 0839 Minutes
Revision of the Modification Panel Membership Cessation Provisions
Monday 20 March 2023
via Microsoft Teams

Attendees

Kate Elleman (Chair)	(KE)	Joint Office
Helen Bennett (Secretary)	(HB)	Joint Office
Andy Clasper	(AC)	Cadent
Ben Mulcahy	(BM)	Northern Gas Networks
Charlotte Gilbert	(CG)	BU-UK
Clare Manning	(CM)	E.ON
David Mitchell	(DM)	SGN
Helen Chandler	(HCh)	Northern Gas Networks
Jenny Rawlinson	(JR)	BU-UK
Kathryn Adeseye	(KA)	CDSP
Oorlagh Chapman	(OC)	Centrica
Phil Lucas	(PL)	National Gas Transmission
Rebecca Hailes	(RH)	Joint Office
Richard Pomroy	(RP)	Wales & West Utilities
Sally Hardman	(SH)	SGN
Steve Mulinganie	(SM)	SEFE Energy Ltd
Tracey Saunders	(TS)	Northern Gas Networks

The Workgroup Report is due to be presented at the UNC Modification Panel by 15 June 2023.

This Workgroup meeting will be considered quorate provided at least two Transporter and two Shipper User representatives are present.

Please note these minutes do not replicate/include detailed content provided within the presentation slides, therefore it is recommended that the published presentation material is reviewed in conjunction with these minutes. Copies of all papers are available at: www.gasgovernance.co.uk/0839/200323

1.0 Outline of Modification

Phil Lucas (PL) introduced the Modification and explained the proposal aims to revise the Modification Rules to mandate that where a Member of the Modification Panel ceases to be employed or engaged by the same specified entity as at the time of nomination, that Member will cease to be a Member of the UNC Modification Panel.

To give Workgroup a full understanding of the Modification, PL provided a walkthrough of his presentation which covered the following topics:

Why Change

PL explained that the Modification Rules set out the membership of the Modification Panel with the majority of Members needing to be a representative of an entity or a constituency of entities. He advised that the rules do not explicitly state the consequence of a change in circumstances, whereby a Member is no longer employed or engaged by the same specified entity as at the time of nomination. The change in circumstances could mean they can no longer effectively represent that constituency.

Options

PL noted the options available to end Panel Membership where there is a change in circumstances and a Panel member as he/she is no longer employed by the same entity as at the time of nomination into the role:

- Rely on the implicit interpretation of the 'representation' requirement in Modification Rules
- Rely on the person/entity responsible for appointment to remove relevant Member
- Rely on Member to relinquish the role
- Include explicit rules to deal with the scenario

It was mentioned that removal by the Chair is also available under specific scenarios.

Steve Mulinganie (SM) noted that Modification 0656 - Changes to Modification Panel arrangements, [0656 - Changes to Modification Panel arrangements | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](https://www.gasgovernance.co.uk/0656-Changes-to-Modification-Panel-arrangements), which was implemented on 23 November 2018 addresses exactly the issue that this Modification (0839) is trying to address and asked, what has changed that was not covered in the Modification 0656 discussions.

Modification 0656 purpose:

The purpose of the Modification is to make a number of changes to the panel arrangements. Firstly, concerning Panel Members and how they represent a constituency, arrangements in relation to Alternates, duration of tenure and attendance at meetings.

When PL asked if the current rules have managed to deal with the current situation, SM highlighted that the current situation is not conflictive so there is no reason for them to discharge their role.

When SM asked why Workgroup do not feel that the solution implemented of Modification 0656 is appropriate, what element of Modification 0656 is now redundant, Rebecca Hailes (RH) advised that this situation has been discussed at length with the UNC Modification Panel Chair and within the Joint Office and noted that Panel members are nominated into the constituency that relates to them.

SM highlighted Panel membership is a representation of the constituency and RH noted the Panel member is nominated by a company that they either work for or are contracted to.

Solution

PL explained that in order to deliver the proposed solution an amendment to the Modification Rules would be required as follows:

- *to require a Member who is no longer employed or engaged by the same entity as at the time of nomination to inform the Panel Secretary as soon as practicable; and*
- *as a consequence of the above, the Member will cease to be a Member of the Modification Panel to take effect from the latter of:*
 - *the date from which the Member will no longer be employed or engaged by the relevant entity; or*
 - *the day following the date the Panel Secretary is informed of such*

Recommended Steps

PL advised the Modification should be subject to Self-Governance and that Panel chose to send the Modification to Workgroup for 3 months rather than the original 1 month proposed.

Amended Modification

PL was invited to walk Workgroup through the amendments that have been made to the Modification, (v2.0 20 March 2023), in summary, further clarifications have been applied to the 'How' and 'Solution' sections. In principle, the revised Proposal provides for the equivalent outcome (i.e. cessation of Membership) where the Panel Secretary *is made aware of a*

Member's change in employment or engagement circumstances (ie. where the Member themselves has *not* made the Panel Secretary aware of such).

Governance

The governance of the Modification was discussed, and Kate Elleman (KE) referred Workgroup to the Authority Direction / Self Governance Materiality Guidance for Proposers that is published on the Joint Office website ([UNC Modifications | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](https://www.gasgovernance.co.uk)) which sets out that proposed changes to the UNC Governance or Modification procedures will only be sufficiently material (such as to require Authority Direction) where the change:

- *affects the rights of the industry to be engaged in proposed changes to the UNC; or*
- *changes the User or Transporter representation obligations; or*
- *changes any Authority decision-making capacity.*

SM noted that Modification 0656 had to go to follow Authority Direction procedures and Oorlagh Chapman (OC) agreed this would be the most appropriate route.

PL clarified that as this proposal seeks to maintain the current representation requirements on an ongoing basis he believes there is not sufficient materiality to warrant Authority Direction.

RH noted that as it is the organisation that nominates the Panel member, if the status changes between the Panel member and the organisation then the relationship would change, potentially making the representation of the constituency more difficult.

KE asked Workgroup to consider how somebody who is no longer in touch with the constituency they represent could continue to engage with that constituency. SM commented that if the member is unemployed, it does not mean they cannot engage with their constituency.

SM noted the same discussions have been had during Workgroup 0656 which came up with the solution of a Conflict of Interest clause.

Richard Pomroy (RP) passed the following comments:

- Under the current rules no one can be nominated and appointed the status that we are currently experiencing, which is a member not being employed by a User.
- If Workgroup thinks that is okay, then there should be more unaffiliated members on Panel?
- If the member is asked to demonstrate their engagement with their constituency, then should there be a requirement for all Panel members to demonstrate their communications with their constituency?

RH pointed out that when members are appointed, they take the role knowing they are there to represent their constituency, not their company.

PL noted that the Joint Office website and the published minutes from Panel meetings to date show the specific organisation that User Members are employed or engaged by.

KE asked Workgroup to consider if a Panel member ceases to work for an employer, how would Workgroup know if there is a conflict of interest? Would there be a reliance on the individual to inform the Panel?

Workgroup recognised, as part of the User Representation Appointment Process, nominees are asked to confirm their willingness to serve on behalf of all Shipper Users.

Each nominee will need to indicate his or her willingness to serve on behalf of all Shipper Users or Suppliers (as appropriate) by sending an email to the Joint Office of Gas Transporters (unselections@gasgovernance.co.uk). Unconfirmed nominations will be deemed to have lapsed.

PL noted the Modification Rules as follows:

3.2 Members

3.2.2 It is expected that each Voting Member shall, as appropriate, represent and inform the Modification Panel of the views of that Member's appointor (or appointors) in relation to Modification Proposals and Requests.

RH clarified, as part of the User Representation Appointment Process, an Election is only held if Joint Office receive more Nominations than there are seats.

When KE asked if a Panel member stopped working for a Transporter, is it expected that the Panel member would be replaced, PL confirmed that would be the case for National Gas Transmission.

Given the understanding that the current concern related to a User Panel Member, SM questioned why NGT (i.e. a Transporter) was proposing a solution. PL responded that ongoing effectiveness of the change governance processes for the Uniform Network Code (which is the Transporters' Code) is why they have an interest.

It was noted that Transporters are obligated, under the UNC Modification Rules, to appoint representatives for the Uniform Network Code Modification Panel including the UNC Committee (UNCC) and the applicable Code Sub-Committees including the DSC Committees.

As there is a different process for the appointment of the Consumer Representative member, KE suggested it would be useful to get a view from Ofgem, would they still want them to represent Consumers if they left the organisation that nominated them? The process for this is documented in the Guidelines for the Non-Domestic Consumer Representatives Nomination Process for Uniform Network Code Modification Panel and Uniform Network Code Committee (UNCC), [UNC Consumer Representative Nomination Process v1.0.pdf \(gasgovernance.co.uk\)](https://www.gasgovernance.co.uk/unc-consumer-representative-nomination-process-v1.0.pdf).

KE asked Workgroup to consider the three scenarios where a User can cease to be a member which are listed in the Modification as being:

- voluntary cessation by the Member; or
- where a Voting Member does not comply with certain meeting attendance requirements; or
- where a Voting Member holds a Conflicting Appointment
 - It was noted that this largely relies on the member declaring a Conflicting Appointment

Clarification was provided that the Chairperson can trigger an investigation if they believe they believe there to be a conflict of interest.

OC confirmed her support for all of the points raised by SM.

Jenny Rawlinson (JR) asked if there could be some kind of means test, which could be a Continuation Means Test to show that a member can still represent their constituency.

It was clarified that if a member is no longer representing a User because they are no longer employed by a Shipper or a Trader, this Modification is making it clearer as currently the Modification Rules are silent in this area. Also, there is nothing in the rules that says you can't retire from being a Panel member.

TS made the following observations:

- Noting that in this scenario, Shipper representation is no longer directly representing a signatory to the UNC or being endorsed at that point in time.
- The rules are very specific around the criteria that has to be met to become a Panel member, a User needs to meet that criteria to retain their membership.

When SM asked if Transporter members are representing their company views, TS clarified that is not the case, they represent signatories of the UNC as a whole document being a contract between all parties.

RH provided the following clauses from the Modification Rules Section 3 – Members:

3.2.1 *The Modification Panel shall be composed of:*

(a) the Panel Chairperson, being (without prejudice to paragraph 5.8.2) a non-voting Member;

(b) up to five (5) other Transporters' Representatives, being Voting Members;

(c) if appointed, up to six (6) Users' Representatives, being Voting Members;

(d) if appointed, the Ofgem Representative, being a non-voting Member;

(e) if appointed, the Terminal Operators' Representative, being a nonvoting Member;

(f) if appointed, up to two (2) Consumers' Representative(s), being Voting Members;

(g) if appointed, the Independent Suppliers' Representative, being a nonvoting Member; and

(h) if appointed, the Independent Gas Transporters' Representative, being a Voting Member

(the persons appointing the Members under paragraphs (b), (c), (f) and (h) being the "Panel Constituency" in respect of such Members).

3.2.2

It is expected that each Voting Member shall, as appropriate, represent and inform the Modification Panel of the views of that Member's appointor (or appointors) in relation to Modification Proposals and Requests.

3.2.3

It is expected that the Terminal Operators' Representative and the Independent Suppliers' Representative and Independent Transporters' Representative shall, as appropriate, inform the Modification Panel of the views of those persons which they represent.

KE agreed to explore 3.2.2 further where it mentions the 'appointor'.

SM noted whether Workgroup are to consider the context of full-time employment, part-time employment, and a consultancy arrangement and if so, those issues were discussed as part of Workgroup 0656.

It was mentioned that if there is a change in arrangements within a member's role, which results in them not being able to keep up to date with issues, that is a competency / relevancy issue and not conflict of interest.

It was noted that the DSC Contract and the IGT UNC are very clear about members having to be employed, and Workgroup agreed that other Energy Codes should be looked at.

In summary, SM questioned whether the Proposal should incorporate some form of ongoing competency test to ensure ongoing suitability to remain a Panel Member as well as additional provisions relating to eligibility from an employment/engagement perspective (i.e. part time, full time etc). On a specific point SM questioned the scenarios the term 'engaged' were intended to cover.

In response, PL expressed an initial view that NGT was not minded to expand the Proposal to incorporate terms covering ongoing competency nor eligibility (beyond the scope of the existing Proposal). PL agreed review the term 'engaged' and consider whether any specific definition is required. However PL noted that no specific definition of this term is included where this is

already used in General Terms D, Annex D-2 (Committee Representatives) Section 5.2 in relation to membership of DSC Committees.

2.0 Initial Discussion

2.1. Issues and Questions from Panel

2.1.1. What happens if a representative changes company but still represents the same constituency?

This question was addressed as part of agenda item 1.0 discussions.

2.1.2. Consider how this is covered in other Codes, particularly the IGT UNC.

KE advised Workgroup that she has investigated the IGT UNC Code which has 2 clauses to note as follows:

4 Composition of the IGT UNC Modification Panel

4.10 *No company or Group of Companies may have more than one Member on the IGT UNC Modification Panel.*

5 Period of Appointment and Alternates

5.9 *A Member shall cease to be a Member if:*

- a) *the Member fails, in person or by Alternate, to attend three (3) consecutive meetings of the IGT UNC Modification Panel that have been duly convened;*
- b) *an IGT UNC Operator or Pipeline User ceases to be an IGT UNC Operator or Pipeline User, or has its Gas Transporter or Shipper's Licence revoked, and the Member is employed by either:
 - i. *that IGT UNC Operator or Pipeline User; or*
 - ii. *an affiliate of that IGT UNC Operator or Pipeline User;**
- c) *the Member ceases to be in the employment of the IGT UNC Operator or Pipeline User, or an affiliate of the IGT UNC Operator or Pipeline User, that they were employed by when appointed under Clause 4.5 or 4.6 of Section L.*

PL noted this is also set out in the Cross-Code Impacts section of the Modification.

TS reiterated that an appointment can only be made by a nominated User if they are currently employed by a User or a Trader.

When KE mentioned that the wider debate might be the whole initial nomination process, SM noted it is not the entry provisions, it is the exit provisions that require debate.

RP highlighted there could be a risk if a member retired from their organisation, but continued to be a member, as time went on, they may be less engaged with the Industry.

It was mentioned that with this Modification, it could be noted that it is making the UNC arrangements consistent with the DSC and IGT UNC.

2.2. Initial Representations

None received.

2.3. Terms of Reference

As matters have been referred from Panel a specific Terms of Reference will be published alongside the Modification at www.gasgovernance.co.uk/0839

3.0 Next Steps

- Is there an alternative Modification?
- Compare against other Energy Codes

- Workgroup to assess, once a member ceases being employed, is there a point when your knowledge/influence wains? (which this Modification is trying to safeguard).
- Consider definition of ‘engaged’.
- Review the Legal Text
- Review Relevant Objectives
- Assess impact on the Guidelines for the User Representative Appointment Process

4.0 Any Other Business

None.

5.0 Diary Planning

Further details of planned meetings are available at: www.gasgovernance.co.uk/events-calendar/month

Workgroup meetings will take place as follows:

Time / Date	Paper Publication Deadline	Venue	Workgroup Programme			
10:00 Monday 17 April 2023	5pm Monday 06 April 2023	Microsoft Teams	Detail planned agenda items. <ul style="list-style-type: none"> • Amended Modification • Consideration of Business Rules • Review of Impacts and Costs • Review of Relevant Objectives • Consideration of Wider Industry Impacts • Consideration of Legal Text • Development of Workgroup Report 			
Action Table (as at 20 March 2023)						
Action Ref	Meeting Date	Minute Ref	Action	Reporting Month	Owner	Status Update
No actions outstanding						