

Draft Modification Report
Energy Balancing Credit Committee Members Personal Liability
Modification Reference Number 0668

Version 1.0

This Draft Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

It is proposed that a provision should be included in the Network Code Section X1.2 (Energy Balancing Credit Committee) that would indemnify EBCC committee members from personal legal action by Users for decisions made in their capacity as EBCC members and Users accept that all decisions made by the committee are made in good faith.

This Modification Proposal will align the Gas Industry with the Electricity Balancing Settlement Code (BSC) which does have protection for its members.

2. Transco's Opinion

Transco's opinion is that this Modification Proposal should be implemented.

EBCC members have requested that Transco proposes this Modification on its behalf to seek protection for its members. The Modification Proposal has been developed by the EBCC and discussed at the newly formed Credit sub group of the Supply Point and Billing Workstream.

As the Energy Balancing Credit Committee (EBCC) members do not currently have any protection from possible liability claims made against them personally in respect of decisions that they make as EBCC members on behalf of the Shipper Community, existing/future members may be reluctant to make decisions on behalf of the Shipper Community as these may result in an action and/or claim being brought against them personally by Users. This could lead to a situation where the EBCC would cease to function effectively and could impact on the future governance of the Energy Balancing regime.

The proposed change will bring the Network Code in line with the Electricity Balancing Settlement Code (BSC) which currently provides protection for members of comparable sub-committees.

3. Extent to which the proposed modification would better facilitate the relevant objectives

The role of the EBCC is to minimise the financial risk of potential default by an individual shipper operating in the Energy Balancing regime by protecting it's members against any personal liability action. It ensures that the existing governance arrangements for the Energy Balancing regime are maintained as they better facilitate the relevant objectives through the efficient and economic operation of the pipeline System.

**4. The implications for Transco of implementing the Modification Proposal , including
a) implications for the operation of the System:**

Transco is not aware of any impact to the operation of the system.

b) development and capital cost and operating cost implications:

Transco is not aware of any development or capital costs from the implementation of the Modification Proposal.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

Implementation would not cause Transco to incur any additional costs.

d) analysis of the consequences (if any) this proposal would have on price regulation:

Transco is unaware of any such consequence.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

Transco does not believe that implementing this Modification Proposal would have any consequence on the level of contractual risk to Transco under the Network Code.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

Transco is not aware of any implications for computer systems

7. The implications of implementing the Modification Proposal for Users

Transco is not aware of any implications on Users by implementation of this Modification Proposal.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party

No such implications have been identified

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

No such implications have been identified.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

- Existing and future EBCC committee members would be indemnified against any personal liability action brought by Users affected by decisions made by the committee. This would mitigate any risk borne personally by EBCC members and should ensure that existing/future members would be comfortable to make decisions on behalf of the Shipper Community. Moreover, it could dissuade current and future Users from being EBCC members resulting in dissolution of the EBCC as individuals would be reluctant to take on the role due to fears of personal liability. Ultimately, this sequence of events would lead to a loss of governance arrangements in respect of the Energy Balancing Credit Regime.

No disadvantages have been identified.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Representations are now sought.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Transco is unaware of any change in legislative, regulatory obligations or contractual relationship of Transco, and each User or Non-Network Code Party as a consequence of implementing this Modification Proposal.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

This proposal is not required to facilitate any such change.

14. Programme of works required as a consequence of implementing the Modification Proposal

No program of works are required as a consequence of implementing this Modification Proposal.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

This Modification Proposal can be implemented immediately as no changes are required to information systems.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this proposal is implemented.

17. Text

SECTION X: NETWORK CODE SUPPLEMENT: ENERGY BALANCING CREDIT MANAGEMENT

Add the following paragraphs at the end of paragraph 1.2.6

1.2.7 No member of the Energy Balancing Credit Committee shall be liable (whether in contract or tort including negligence or otherwise) to Transco or any of the Users for anything done when acting properly in or in connection with his office under the Code, or anything done in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the Code; and each User and Transco waives any such liability that any such member may have and any claim in respect thereof.

1.2.8 Nothing contained in paragraph 1.2.7 shall exercise or limit the liability of a member of the Energy Balancing Credit Committee:

(a) for death or personal injury resulting from the negligence of such member; or

(b) in any case where such member has in the exercise and discharge of its powers, duties, functions and discretions acted in bad faith or fraudulently.

Representations are now sought in respect of this Draft Report and prior to Transco finalising the Report

Signed for and on behalf of Transco.

Signature:

Terry Grove
Service Delivery Manager
Support Services

Date: