










UNC Final Modification Report		At what stage is this document in the process?
<h1>UNC 0603S:</h1> <h2>Removal of liability for members of Performance Assurance Committee</h2>		<div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div>
Purpose of Modification: To provide legal protection for members (and alternate members) of the Performance Assurance Committee (PAC) identical to those provided to members of the Energy Balancing Credit Committee.		
	Panel consideration is due on 15 December 2016 (<i>at short notice by prior agreement</i>)	
	High Impact: None	
	Medium Impact: None	
	Low Impact: All Code Parties, Members and Alternate Members of the Performance Assurance Committee	

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Timetable		 0121 288 2107
Modification timetable:		 029 2027 8552 or 07812 973337
Modification Panel consideration	17 November 2016 (short notice)	Transporter: Wales & West Utilities
Consultation Close-out for representations	08 December 2016	 029 2027 8552 or 07812 973337
Final Modification Report available for Panel	09 December 2016 (short notice)	
Modification Panel decision	15 December 2016	
		Systems Provider: Xoserve
		 commercial.enquiries@xoserve.com

1 Summary

What

Discussions at Performance Assurance Committee (PAC) on confidentiality have shown that members of PAC need protection from legal action for their decisions taking when acting in good faith in accordance with their duties as members or alternate members of PAC. It seems sensible to reflect the provisions in Section X relating to members of Energy Balancing Credit Committee (EBCC).

Why

The change is needed to give members protection from legal action by Parties that are affected by their actions or decisions. Other UNC Sub-committees, with the exception of EBCC, do make decisions but these do not directly affect Parties and therefore it is desirable to give protection to PAC members to ensure that they do not feel constrained in performing their duties. This protection is limited to decisions made in good faith pursuant to members' duties. Not having this protection may mean that members do not make difficult decisions and thereby limit the effectiveness of PAC in delivering performance assurance.

How

New text will be inserted that mirrors the provisions in TPD X 1.2.7 and 1.2.8 relating to EBCC.

2 Governance

Justification for Self-Governance

The Proposer believes that Self Governance procedures should apply because this does not have a material effect on any of the relevant criteria.

Fast track procedures are not proposed, as this is not a house keeping change; although this change could have been made by modification 0506V this was not a requirement of the business rules and it is therefore not an error in the legal text of 0506V.

Requested Next Steps

This modification should be:

- subject to self-governance
- proceed to Consultation.

It was proposed that this modification goes straight to Consultation as the legal text is exactly the same as the existing text in TPD X 1.2.7 and 1.2.8 with necessary changes being made to make it apply to PAC.

This issue was briefly discussed at PAC on 10th October 2016 where the Proposer stated that a modification maybe required. The draft modification was discussed at the PAC on 8th November 2016.

3 Why Change?

Members of PAC hold confidential information and may be required to make decisions that directly impact UNC Parties. It is important that they should be protected from liability claims made against them when they are carrying out their duties in good faith.

General Terms B 2.4.1 states “Nothing in the Code or a Framework Agreement or any Ancillary Agreement creates contractual rights or liabilities: [between any two Parties]”

However General Terms B 4.3.6 states “Members of a Sub-committee appointed to represent Users shall be appointed having regard to the contribution which they may as individuals make to the business of the Sub-committee and not to the Users by whom they are employed or engaged.”

This makes it clear that members of PAC are appointed having the regard to the contribution they make as individuals.

In this respect PAC members are in a similar position to members of the EBCC. Members of the EBCC are protected from legal action by clauses in TPD X 1.2.7 and 1.2.8 which were presumably introduced to provide clarity and assurance for EBCC members and this modification proposes to give PAC members the same protection.

This should give confidence that members of PAC are protected from legal action by UNC Parties for decisions that PAC members and alternate members make when acting in good faith in carrying out their duties.

The legal text replicates that in TPD X 1.2.7 and 1.2.8 to be consistent with EBCC arrangements and to facilitate the speedy resolution of this issue to enable PAC to start fulfilling its functions as soon as possible.

4 Code Specific Matters

Reference Documents

PAC terms of reference

<http://www.gasgovernance.co.uk/sites/default/files/PAC%20Terms%20of%20Reference%20approved%20v2.0.pdf>

Performance Assurance Framework Document (this is currently being reviewed by PAC)

<http://www.gasgovernance.co.uk/sites/default/files/PAF%20Guidelines%20v1.0.pdf>

Knowledge/Skills

No specific requirements.

5 Solution

The legal text will be inserted in TPD V 16.2 and will replicate the text from TPD X 1.2.7 and 1.2.8 with the necessary changes being made, for example the name of the committee will be changed from EBCC to PAC and the appropriate UNC Parties will be referenced.

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

There is no impact on an SCR.

Consumer Impacts

There is no direct impact on Consumers.

Cross Code Impacts

There are no cross code impacts.

EU Code Impacts

There are no EU Code impacts.

Central Systems Impacts

There are no Central Systems impacts.

User Pays

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	n/a
Proposed charge(s) for application of User Pays charges to Shippers.	n/a
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	n/a

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Relevant objective (f) is facilitated as it promotes efficiency in the administration of Code by giving members of PAC confidence that they have protection from legal action when they carry out their duties.

8 Implementation

As self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

9 Legal Text

Text Commentary

The text shown below is the text from TPD X 1.2.7 and 1.2.8 shown with strike outs and additions (in red) to show that the text is the same as that for the EBCC with only the necessary changes made.

The current legal text relating to PAC in TPD V specifically refers to DNOs, Shipper Users and Trader Users and this text retains this for consistency. Note that Independent Gas Transporters will be included after Project Nexus Implementation Date.

~~X 1.2.7~~ **V 16.2.3** No member of the ~~Performance Assurance Committee~~**Energy Balancing Credit Committee** shall be liable (whether in contract or tort including negligence or otherwise) to **any DNO, National Grid-NTS or any Shipper User or any Trader User**~~of the Users~~ for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member 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 **Transporter, [Independent Gas Transporter], Shipper User and Trader User**~~User and National Grid-NTS~~ waives any such liability that any such member may have and any claim in respect thereof.

~~X 1.2.8~~ **V 16.2.4** Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the ~~Performance Assurance Committee~~**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.

Legal Text

Insert new paragraphs 16.2.3 and 16.2.4 into TPD Section V

16.2.3 No member of the Performance Assurance Committee shall be liable (whether in contract or tort including negligence or otherwise) to any DNO or any Shipper User or any Trader User for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member 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 Transporter, Shipper User and Trader User waives any such liability that any such member may have and any claim in respect thereof.

16.2.4 Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the Performance Assurance 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.

Post Nexus Text

16.2.3 No member of the Performance Assurance Committee shall be liable (whether in contract or tort including negligence or otherwise) to any DNO or any Shipper User or any Trader User for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member 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 Transporter, Independent Gas Transporter, Shipper User and Trader User waives any such liability that any such member may have and any claim in respect thereof.

16.2.4 Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the Performance Assurance 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.

10 Consultation

Panel invited representations from interested parties on 17 November 2016. The summaries in the following table are provided for reference on a reasonable endeavours basis only. It is recommended that all representations be read in full when considering this Report. Representations are published alongside this Final Modification Report.

Of the 7 representations received implementation was unanimously supported.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
National Grid Gas Distribution Ltd	Support	f - positive	<ul style="list-style-type: none">PAC members have been appointed to represent Users on the basis as stated in General Terms 4.3.6 <i>"having regard to the contribution which they may as individuals make to the business of the Sub-committee and not to the Users by whom they are employed or engaged"</i> and have provided individually signed statements to the Joint Office confirming the capacity in which they will be acting.Implementation would afford the degree of liability protection to PAC members that is currently afforded to EBCC members. Having this protection will allow members to take decisions to the benefit of the industry as a whole without worrying about potential exposure to liabilities.Agrees with self-governance status.Implementation should be as soon as possible.
Northern Gas Networks	Support	f - positive	<ul style="list-style-type: none">Agrees that PAC members should have protection from Parties that are affected by PAC decisions or actions. This will increase the effectiveness of the PAC, and allow for better results overall.Agrees with self-governance status.Implementation should be as soon as possible.

RWE npower	Support	f - positive	<ul style="list-style-type: none"> Provides members and alternates of the PAC with additional protection from potential liability claims that will enable them to make appropriate decisions in good faith. Replicating the assurance afforded to the EBCC offers a straightforward and effective means of providing that protection. Agrees with self-governance status. Implementation should be as soon as possible, so the additional protection can come into force prior to the earliest possible subsequent meeting of the PAC.
Scotia Gas Networks	Support	f - positive	<ul style="list-style-type: none"> Provides confidence to PAC members that they have protection from legal action and can discharge their duties in good faith. Thereby removing a potential barrier that may inhibit decision making and providing the best opportunity for members to act in the best interest of the GB Gas Industry. The approach is consistent with that applied in relation to other UNCC Sub-committees where an element of members' personal liability exists. Agrees with self-governance status. Implementation should be as soon as possible.
ScottishPower Energy Management Ltd	Support	f - positive	<ul style="list-style-type: none"> Protection should be provided for PAC members, where they have made decisions in good faith. Members could be in the position of making decisions that have an impact on Parties to the Code, which puts the members in a similar position to EBCC members, who are already afforded the protection as proposed in this modification. It has already been mooted that PAC members may be unwilling to sit on the PAC if this protection is not provided; therefore it seems prudent to ensure that the concerns of PAC members are addressed. It is believed that replicating the protection provided for the EBCC members should be sufficient, given that it has worked well since it was introduced. Agrees with self-governance status. Implementation should be as soon as practicable, given that the PAC is already established and to ensure that no PAC member feels inhibited from taking decisions.
SSE	Support	f - positive	<ul style="list-style-type: none"> Discussions at PAC meetings on confidentiality have shown that PAC members need protection from legal action, for decisions taken when acting in good faith and in accordance with their duties as members or alternate members of the PAC. Not having this protection may limit members' and, ultimately, the PAC's effectiveness in delivering performance assurance measures as

			<p>decision making may be compromised.</p> <ul style="list-style-type: none"> • Agrees with self-governance status. • Implementation should be as soon as possible.
Wales & West Utilities	Support	f - positive	<ul style="list-style-type: none"> • Provides appropriate protection for PAC members and will provide confidence that they can fulfill their duties without fear of legal action being taken against them. • Agrees with self-governance status. • Implementation should be as soon as possible.

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report, and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

Discussion

Consideration of the Relevant Objectives

Determinations

12 Recommendations

Panel Determination