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24th August 2005

Mr. Julian Majdanski
Joint Office of Gas Transporters
Ground Floor Red
51 Homer Road
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UNC Modification Proposal 0039: 'Removal of 9.5.5 of the Modification Rules'

Dear Julian,

Thank you for your invitation seeking representations with respect to the above Modification Proposal.

Transco – Distribution is not in favour of implementation

The rationale for this is as follows:

Para 9.5.2(b)(i) of the Modification Rules requires of the panel to "determine whether or not to recommend implementation". At present using simple majority voting principles, unless there is a majority in favour of implementation, the vote is determined as having failed and that the panel has determined a recommendation that the proposal should not be implemented. Clearly, where half the panel members present vote in favour, the above principle can not be applied and, hence, paragraph 9.5.5 has been included in the rules to deem the panel's determination. The deeming of a determination, for UNC purposes, does not mean that the determination was as a result of a deemed majority.

In this context, rule 9.5.5 serves only to provide an outcome, as required by 9.5.2(b)(i), where none would otherwise be obviously forthcoming. To delete 9.5.5 would be inconsistent with the duties of the panel, as required by 9.5.2(b)(i), to make a determination in favour, or not, of implementation. The lack of a decisive vote should not be left as simply a failure to provide a determination. Transco – Distribution believes that the lack of a determination, in the event half of the voting members at a meeting of the Modification Panel vote in favour of implementation increases, rather than decreases, any purported ambiguity that exists in the process at present. Transco – Distribution believes that such increased ambiguity would not be conducive to the "promotion of efficiency in the implementation and administration of the uniform network code" and, hence, implementation would not better facilitate the relevant objective.

Transco – Distribution believes that further options should be explored in terms of panel voting to compliment the requirement of 9.5.2(b)(i), which could include the option for a panel member to abstain from a vote, since a majority decision could be forthcoming where half the panel attendees vote in favour, should one or more of the panel members present decide to exclude themselves from a particular vote. As there is no obligation on panel member requiring him or her to vote, abstention should be an option for the panel member. Only where the panel fails to make a determination by way of an actual majority should a deemed determination be provided in accordance with 9.5.5, and the fact it is a deemed determination be recorded and forwarded to Ofgem in the Final Modification Report.

To summarise; 9.5.5 allows the panel to discharge its obligation under 9.5.2(b)(i), by way of a deemed determination, but since such determination would not have been the result of an actual majority decision, the ability to appeal Ofgem's decision would be permitted by the Order.

Yours sincerely

Declan McLaughlin
Commercial Manager – Customer Service
National Grid Transco