

Modification proposal:	Uniform Network Code (UNC) 084: Removal of the Subject Matter Expert (SME) from the Modification Rules (UNC084)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	8 November 2006	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

Over recent months the UNC Governance Workstream have been exploring ways to streamline and improve the UNC Modification Rules.³ The workgroup identified several areas of the modification rules which they consider could be improved. These areas are:

- The role of the SME within the modification process.
- The role of workgroups within the modification process.
- The treatment of industry responses within Final Modification Reports (FMRs).
- The role of Panel Members regarding the treatment of industry responses to consultations.
- The timing of the provision of legal text.

The modification proposal

The most significant change within this modification proposal is the removal of the SME from the modification process. However, there are a number of other recommended changes which would support and enhance the procedures. The key changes contained in this proposal are:

- The removal of the administrative role of the SME from the modification process, to be replaced by the Joint Office. It is considered that this would provide a more efficient and economic method of producing draft and final modification reports, whilst achieving increased neutrality;
- The use of Workgroup Reports as Draft Modification Reports (DMRs), avoiding the duplication of work for what will be substantively the same document. This should also contribute to a more thorough development of proposals, allowing for greater participation and wider pool of expertise;
- The removal of the 2 Business Day window for consideration of industry responses by UNC Panel members. This will be superfluous, given that a high level only summary of responses will be provided within the FMR, with all representations to be appended in full. The proposer considers that this approach will provide the necessary level of transparency, whilst improving efficiency by effectively removing two days from the current process;
- Formal legal text to be provided only when the panel determines that it is required. Where the Panel considers that proposals are sufficiently developed and

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ Notes of the Governance Workstream meetings can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com.

clear to proceed straight to consultation, the DMR will be produced within 3 business days instead of the current 15;

- Where the proposer requests a proposal to go straight to consultation, the proposal itself should be drafted using the same structure and with similar levels of detail as would be included in a DMR. It is considered that this will reduce administration and cut the time between a panel determination and a proposal being issued for consultation;
- Where a DMR is considered to require legal text, the Gas Transporter (GT) will have 15 Business Days to produce and submit this to the Joint Office prior to release of the DMR, as currently;
- Where a GT is unable to produce legal text within the prescribed timescales, a report must be submitted to the Panel giving reasons. This may help Panel members to establish whether the proposal is fit to go to consultation or requires further development.

The proponent of this modification proposal believes that this proposal will better facilitate Standard Special Condition A11 (f) of the GT Licence⁴.

UNC Panel⁵ recommendation

At the UNC Modification Panel meeting held on 21 September 2006 members voted unanimously in favour of implementing this modification proposal.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the FMR dated 4 October 2006. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR⁶. The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC⁷; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties⁸.

Reasons for the Authority's decision

We note that of the seven responses, six were in favour of it being implemented with the last offering qualified support. We agree with the five who considered that the implementation of the modification will further relevant objective (f) of the UNC, the promotion of efficiency in the implementation and administration of the UNC. We also consider that, insofar as the UNC modification procedures are required of Standard Special Condition A11 of the GT licence, that this modification will further facilitate relevant objective (c), the efficient discharges of the licensee's obligations under its

⁴ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see:

http://62.173.69.60/document_fetch.php?documentid=6547

⁵ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

⁶ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁷ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see:

http://62.173.69.60/document_fetch.php?documentid=6547

⁸ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

licence. We do not consider this proposal to have a material or detrimental impact upon the other relevant objectives.

Removal of SME

SMEs were introduced into the modification process as part of the DN Sales project and subsequent implementation of the UNC. In a related RIA⁹ we stated that any new governance arrangements should be designed in accordance with the principles of non-discrimination, transparency, inclusiveness, effectiveness and efficiency. In particular, it was considered that retaining National Grid in an administrative role could increase the potential for discriminatory treatment of modification proposals. The introduction of the SME role was, at the time, considered to be one way of ensuring non-discrimination and greater consistency with these principles.

By removing the role of the SME, this modification proposal will bring the assessment of UNC proposals closer to the approach adopted under the Balancing and Settlement Code (BSC), whereby the Code administrator co-ordinates the assessment of proposals by a workgroup of industry experts and prepares the report on its findings which are then considered by the industry, the Panel and Ofgem. Whilst consistency in approach across Codes is not in itself an argument for the approval of any given proposal, it is nonetheless beneficial where this could result in the spread of best practice.

Currently, all SMEs are employees of a single signatory type; GTs. Although SMEs are required to act impartially under the terms of the Code of Conduct¹⁰, we note the views of some respondents regarding the real or perceived objectivity in the drafting of DMRs and FMRs. However, this view was contradicted by the proposer, for whom several of the SMEs work. They commented that a general view amongst SMEs was that they avoid potential conflicts of interest and accusations of bias to such an extent that they feel unable to provide comprehensive expert input. Several respondents noted that the role of the SME had become largely administrative and therefore devalued.

We consider it is apparent from these comments that there is a natural tension between providing unbiased commentary and contributing genuine expertise, and to this extent the role of the SME is not achieving its original aims. We also acknowledge the administrative burden that this role places on the organisations who contribute personnel to the SME register.

Shifting the administrative workload from the SME to the Joint Office should alleviate the competing demands on the author of the modification report, both in terms of time and any conflicts of interest. Similarly, where a modification proposal has been sent to development it is now envisaged that the expert input previously provided by the SME will be provided by workgroup members. Previously, workgroups would produce a report to the modification panel for determination on whether it should go to consultation. The SME would then produce a separate DMR for consultation purposes. We agree that this step added little value and that by allowing the workgroup report to effectively form the DMR, this administrative burden can be removed, with commensurate time savings. Further, we consider that DMRs which have been produced via a workgroup and therefore informed by a wider group of industry experts should produce better developed proposals and better informed industry consultations.

⁹ [National Grid Transco – Potential Sale of network distribution businesses.](#)

¹⁰ Available from the Joint Office of Gas Transporters website: www.gasgovernance.com

2 Day review window.

In September 2004 we approved a modification¹¹, which allowed Panel members to comment on the treatment of industry responses within FMRs. It was acknowledged in that proposal that Ofgem received and read all representations in full. However, the proposal was approved, in part, in order to alleviate the concerns of some industry parties who felt that on occasion not all representations received balanced analysis or were accurately reflected within FMRs. Whilst approving this modification, we considered this to be a rare occurrence, and as such any impact upon the efficiency of the modification process would be limited.

UNC084 now seeks to remove this provision from the modification procedures on the basis that higher quality DMRs/FMRs, including a high level summary of representations which are supplemented by copies of all representations in full, should negate the need for panel members to comment on such issues. In addition, this situation has arisen just a handful of times and as such, is not considered to add value to the process. It should also be noted that Standard Special Condition A11 (19) of the GT licence provides for any question arising under the modification procedures as to the consideration of responses, shall be determined by the Authority.

We agree with those respondents who suggested that this 2 day window has added little or no value to the process. Now that it is recognised that the summary of representations is intended to be on a high level only, with representations in full accompanying the FMR, there is little need for such a review by the panel. We would also reiterate that we consider all representations in full. Notwithstanding this, as set out above, any respondent is free to contact Ofgem if they feel that their views have not been adequately or accurately reflected in the FMR.

This element of the proposal would effectively shave 2 Business Days from the existing modification process. As such, we consider that it will contribute to the more efficient administration of the UNC and better fulfil relevant objective (f) of the UNC.

Proposal drafting

We note that where the proposer requests that their proposal be issued straight to consultation, UNC084 inserts¹² a requirement upon them to provide the information that would ordinarily have been provided as part of a workstream or development workgroup report.

Some respondents considered that by ensuring modification proposals are adequately drafted at the earliest possible stage understanding of the proposal will be aided and subsequent timescales streamlined. However, one respondent considered that GTs would be more able to accommodate the additional requirements than shippers, making it more likely that GT proposals could proceed directly to consultation.

¹¹ Network Code Modification 715: 'Modification Panel approval of the treatment of Representations in Final Modification Reports'.

¹² UNC Modification Rules paragraph 6.2.6

We would be concerned if the additional requirements for a proposal were sufficient to act as a deterrent to proposals being brought forward, particularly by smaller players. However, we note that the additional requirements are not mandatory for all proposals, and will only apply where the Proposer requests that the proposal go straight to consultation (if subsequently granted by the panel). We consider it reasonable that the proposer provide the information that would otherwise have been provided as part of the DMR, thereby ensuring that the consultation process is not detrimentally affected by their request. We also consider that this requirement is consistent with earlier modification decisions¹³, where we reiterated our support for the principles of greater transparency and accountability within the modification process, and noted that this extends as much to those who raise proposals as to those who administer them.

Provision of legal text

We consider that the availability of legal text can enhance respondents' ability to understand the effect of a modification proposal, and thereby improve the consultation process. In December 2005 we approved UNC modification 048, which introduced a requirement for the GTs to arrange for the provision of legal text to accompany the DMR, rather than the FMR. However, it remained subject to the discretion of the modification panel, insofar as the panel may determine that legal text would not be required in certain circumstances. This modification retains this discretion, though reverses the default situation, so that legal text is not produced unless the panel determines that it is required.

Where a DMR is considered to require legal text, the GT will have 15 Business Days to produce it, as currently. However, where legal text has not been requested, the Joint Office will have 3 Business Days to prepare and issue a DMR. We agree that this reduced timescale should be achievable given the reduced work required to produce the DMR, in particular facilitated by the proposer and/or workstream

We also note that where the GT is unable to produce legal text within the prescribed timescales a report must be submitted to the Panel giving reasons for this. The panel may then determine whether to proceed with the consultation or refer the proposal to the workstream for further development. We anticipate that the panel will be informed by these reasons, and make its determination appropriately.

Notwithstanding all of the above, the Authority will also retain the ability to request or direct the preparation of legal text.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC084: '*Removal of the Subject Matter Expert (SME) from the Modification Rules*' be made.



Nick Simpson

Director, Industry Codes & Licensing

Signed on behalf of the Authority and authorised for that purpose

¹³ Network Code Modification 712: 'Additional information in modification proposal and medication reports'.